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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 482

THE ROSICRUCIAN FELLOWSHIP, A CORPORATION; Z. GLENN MEYNCKE, JUANITA EMERICK, ADDA J. WILKES, FREDERICK OAKES, KITTIE COWEN, OMAR DODSON, MARGARET SCARBOROUGH, MARY MONAHAN, ADAM KNIELING, ALFA LINDANGER, DR. GAY OWEN, AS INDIVIDUALS, AND AS OFFICERS, TRUSTEES AND DIRECTORS OF THE ROSICRUCIAN FELLOWSHIP, A CORPORATION, *Petitioners,*

vs.

THE ROSICRUCIAN FELLOWSHIP NON-SECTARIAN CHURCH, A CORPORATION; MRS. MAX HEINDEL; IRENE MURRAY, GEORGE SCHWENK, ARNOLD MULLI, KARL MUELLER, INDIVIDUALLY AND AS DIRECTORS AND INCORPORATORS OF THE ROSICRUCIAN FELLOWSHIP NON-SECTARIAN CHURCH; THE ROSICRUCIAN PROBATIONERS ASSOCIATION; AND RICHARD WEIHRICH, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

ROLLIN L. MCNITT,
EDYTHE JACOBS,
Counsel for Petitioners,
824 Occidental Life Bldg.,
1151 South Broadway,
Los Angeles 15, California.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

To The Honorable The Chief Justice and Associate Justices of The Supreme Court of The United States:

Statement of Matter Involved

Petitioners above-named seek a Writ of Certiorari from this Court to review the final judgment of the Supreme

Court of the State of California affirming the judgment of the Superior Court in and for the County of San Diego, declaring and partitioning the temporal and ecclesiastical functions of the church, known as "The Rosicrucian Fellowship," between petitioner corporation and respondent corporation, and enjoining petitioner corporation and the individual petitioners from exercising or conducting the ecclesiastical functions of their church.

While it is adjudged that the title to the church property is in petitioner corporation which has owned and held the property of the church for more than thirty years in trust for the members of the church, the judgment transfers the control of the church property previously controlled by petitioner corporation, to respondent corporation, by the device of adjudging the right to the dominant use of the church property in the exercise of the ecclesiastical functions of the church. The judgment requires such dominant use to be made according to the Articles of Incorporation, By-Laws, rules and regulations of respondent corporation, which require written application to and a certificate of membership from the Board of Directors of respondent corporation, in order to claim membership in the church and use of the church property. (Exhibit T.T.) Respondent corporation was organized in July, 1944, by a small group of disgruntled members of The Rosicrucian Fellowship. Those members of the church who have not joined the new church corporation and do not hold a certificate of membership therein are thus deprived by the judgment of their beneficial ownership in the church property.

The Rosicrucian Fellowship has over 3,000 members all over the world (R. 26). Respondent sought and procured this judgment only on behalf of the 541 members of the

church who reside in the United States and who have joined respondent church corporation (Find. of Fact X, R. 118). Members of the church residing outside of the United States were neither parties to nor represented in the action and were deprived of their rights in the church property by the judgment in this case.

Petitioners contend that the exercise of ecclesiastical jurisdiction by the Civil Court over this church constitutes a taking of property without due process of law; the injunction against conduct and exercise of ecclesiastical functions constitutes an abridgment of freedom of religion, speech and press; and the adjudication of rights of members of the church who were neither parties to nor represented in the action constitutes a deprivation of property without due process of law; all in violation of the Fourteenth Amendment to the Constitution of the United States.

Statement of Basis of Jurisdiction

1. Jurisdiction of this Court is invoked under Title 28, United States Code, section 1257, which provides, in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (3) By writ of certiorari—where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * of * * * the United States.

2. The following cases are believed to sustain the jurisdiction of this Court:

Watson v. *Jones,* 13 Wall 679, 20 L. Ed. 66;

Kedroff, etc. v. *St. Nicholas Cathedral, etc.,* (decided Nov. 24, 1952) 21 L.W. 4029;

See also:

Everson v. *Board of Education,* 330 U. S. 1, 91 L. Ed. 711;

McCollum v. *Board of Education,* 333 U. S. 203, 92 L. Ed. 249;

Zorach v. *Clausen,* 343 U. S. 306, 72 S. Ct. 679;

(all recognizing the fundamental principle of separation of church and state)

3. The Supreme Court of the State of California is the highest court of the State.

4. The judgment of which review is sought is a final judgment of the Supreme Court of California (R. 197).

5. The judgment herein sought to be reviewed was filed on June 20, 1952 (R. 197). Petition for rehearing, timely filed was denied July 17, 1952 (R. 221). Order of this Court Extending Time to File Petition for Writ of Certiorari was duly entered on October 14th, 1952, extending time to file the within Petition to December 13th, 1952 (R. 222).

6. The Federal questions of substance which have been decided in effect by the State Court are as follows:

A. That the civil court had jurisdiction to determine which of the contending factions of members of the church were entitled to exercise the ecclesiastical functions pertaining to the Rosicrucian Philosophy, and that such determination did not constitute an exercise of ecclesiastical jurisdiction in violation of the Fourteenth Amendment to the Constitution of the United States, because the right of use of

church property in the exercise of the ecclesiastical functions was determined in the action.

B. Where there is no established church system or government and hence no church tribunal, the civil court has jurisdiction of such church to adjudicate its ecclesiastical activities in order to settle the right of use of the church property in the exercise of such ecclesiastical functions, and that such determination does not constitute an improper exercise of ecclesiastical jurisdiction in violation of the Fourteenth Amendment to the Constitution of the United States.

C. Where a religious society has no established system of government but is conducted under an "anomolous arrangement", the court may adjudge that a number of members of the church may form a new corporation to establish a system of church government, without knowledge or consent of all of the members, and that the court may decree that all members of the church must submit to the ecclesiastical control of the church by such corporation and such decree does not constitute a denial of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States as to those members of the church who have not joined the new church corporation.

D. That an injunction against conducting or carrying on the ecclesiastical functions of the church was a proper exercise of jurisdiction by the court in support of its judgment decreeing the dominant use of the church property in favor of a faction of church members, in order to prevent interference with their use of the church property in the exercise of the ecclesiastical functions of the church; that such injunction did not constitute a denial of constitutional guarantees of freedom of religion, freedom of speech and

press, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

E. That the court may assume without evidence that a sufficiently substantial number of members of a church "who could reasonably be reached" had joined the new church corporation formed by a small number of church members, and that those who had not joined are neither necessary parties to the litigation nor were deprived of any rights in the church property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the judgment requiring them to submit to the government and control of the church by the new corporation in order to exercise their beneficial rights of use of church property.

F. Where all members of a church are neither parties to nor represented in an action involving use of church property, the unrepresented members are not indispensable parties; their rights may be adjudicated in action by a portion of the members and the judgment decreeing the dominant use of the church property in favor of a portion of the members of the church did not deprive the unrepresented members of their beneficial rights in the church property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

7. The Federal questions were timely, raised in the following manner:

A. As pointed out by the State Supreme Court, petitioners' main contention on appeal from the trial court's judgment in this case was that "Civil Courts have no Ecclesiastical Jurisidction." In Appellants' Opening Brief in the District Court of Appeal, under Topic I, pp. 85-104, petitioners urged:

"when the trial court undertook to determine who has

the power to exercise the esoteric or ecclesiastical functions of The Rosicrucian Fellowship, the court assumed ecclesiastical jurisdiction over this church and exceeded its jurisdiction as a civil court. The judgment is therefore void, particularly, in the parts thereof which declare and protect ecclesiastical functions and rights to exercise the ecclesiastical functions."

B. At p. 192 of Appellants' Opening Brief in the District Court of Appeal, petitioners there asserted:

> "The constitutional immunity of freedom of speech and of press, as well as freedom of religion, also apply to Subdivision C (4) of the judgment restraining Appellants from conducting or carrying on of the ecclesiastical and esoteric functions of the Rosicrucian Philosophy.
>
> "For each and all of the foregoing reasons, it must be concluded that the injunctive provisions of this judgment are void as in excess of the court's jurisdiction."

C. The constitutional questions are also urged under the Analysis of the trial court's judgment in Appellants' Opening Brief in the District Court of Appeals, as follows:

> (At p. 63:)
>
> (1) "The said declaration in said subdivision 3 (Division B) * * * deprives the individual Appellants of their constitutional rights of freedom of religion and religious worship."
>
> (At p. 75:)
>
> (2) "Apart from the lack of ecclesiastical jurisdiction of the civil courts to adjudge the ecclesiastical question of the right to conduct or carry on ecclesiastical functions for a church, this injunctive provision (Subdivision C (4)) violates all provisions of personal privilege and individual freedom under the state and federal constitutions, * * *"

(At pp. 83-84)

(3) "This injunctive provision (Subdivision C (10)) is also violative of the constitutional rights of Appellants to freedom of religion in that it prevents them from the free exercise and conduct of the particular sect or religion to which their philosophy or conscience has directed them."

D. In Appellants' Reply Brief in the District Court of Appeal, under Topic XV, C, (pp. 203-206) petitioners urged:

"Objection to Lack of Jurisdiction of the Court to Adjudicate property rights of indispensable parties can be raised for the first time on appeal; such adjudication of property rights of absent indispensable parties is a deprivation of property without due process of law in violation of State and Federal Constitutions."

* * * * * * *

"Thus, it appears that the judgment in the case at bar is not only void as in excess of jurisdiction, but constitutes a deprivation of property rights of the members of The Rosicrucian Fellowship without due process of law, in violation not only of Section 13 of Article 1 of the Constitution of the State of California, but also of the Fourteenth Amendment to the Constitution of the United States."

E. In Appellants' Reply Brief in the District Court of Appeal, (p. 245), petitioners urged:

"The judgment in this case not only constitutes a complete miscarriage of justice but amounts to a deprivation of property rights without due process of law, in violation of the State and Federal Constitutions, and an abridgement of the constitutional guarantees of freedom of speech and freedom of religion therein."

F. The District Court of Appeal sustained petitioners' contentions and reversed the judgment of the trial court upon the ground that the civil court had no ecclesiastical jurisdiction, and that the injunction against conduct of ecclesiastical functions was an improper exercise of ecclesiastical jurisdiction by the Court. Thereafter, the State Supreme Court granted a hearing on the briefs filed in the District Court of Appeal. The constitutional questions thus raised were before the State Supreme Court in its determination of the appeal.

The State Supreme Court, ignoring the decision of the District Court of Appeal, and in direct opposition to the principles there announced, affirmed the judgment of the trial court, determining the constitutional issues as hereinabove shown. After this surprising pronouncement by the State Supreme Court, petitioners filed a petition for rehearing, urging again specifically, as a basis for rehearing (at p. 3):

> "1. That said decision denies due process of law and takes property without due process of law in violation of * * * the Fourteenth Amendment to the Constitution of the United States.
>
> "2. That said decision constitutes a denial of religious liberty * * * and an abridgment of freedom of speech and press * * * as guaranteed by the Fourteenth Amendment to the Constitution of the United States."

The Supreme Court denied this petition for rehearing without opinion.

Questions Presented

1. Whether the judgment declaring and partitioning the ecclesiastical functions of the church, as distinguished from the temporal functions, and transferring the use and control of church property to the faction of church members de-

clared to be the ecclesiastical agents of the church, constitutes an unconstitutional exercise of ecclesiastical jurisdiction over the church by the Civil Court and a denial of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Whether an injunction against conducting or exercising ecclesiastical functions of a church constitutes a denial of religious liberty and abridgment of freedom of speech and press as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3. Whether the judgment adjudging the right to use of church property to be subject to the Articles of Incorporation and By-Laws of a new corporation, organized by a schismatic faction of church members, without prior knowledge and consent of the whole membership, constitutes a deprivation of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, where all of the members of the church (those residing outside of the United States) are neither parties to nor are represented in the action.

Reasons Relied On for Allowance of Writ

1. The State Supreme Court has decided federal questions in a way probably not in accord with applicable decisions of this Court. Supreme Court Rule 38 (5) (a)

In the early case of *Watson* v. *Jones*, 13 Wall (U. S.) 679, 20 L. Ed. 666, this Court announced the principle that civil courts have no ecclesiastical jurisdiction, based upon principles of religious liberty.

In the recent case of *Kedroff etc.* v. *St. Nicholas Cathedral etc.*, (decided Nov. 24, 1952) 21 L. W. 4029, this court reaffirmed the constitutional principle of separation of church and state as applied to a state legislative act transferring control of use of church property in the conduct of

the ecclesiastical functions of the church, holding such statute to be an unconstitutional invasion of the internal affairs of the church.

In the case at bar, the contest is not for title to the church property, but for control of church affairs, the church property having been devoted to church purposes, and no breach of trust being involved. Under the judgment in this case, affirmed by the State Supreme Court, control of the use of church property in the exercise of the ecclesiastical functions of the church, is transferred by judicial decree requiring that the dominant use of the church property be had according to the Articles of Incorporation, By-Laws, Rules and Regulations of respondent corporation, organized without the knowledge and consent of all of the members of the church and not representing all of the members of the church.

Whether the transfer of church control is made by judicial decree or by legislative act, it is an unconstitutional invasion of the free exercise of religion, in conflict with the principles announced by this Court in the above mentioned cases and this Court should so declare.

2. The State Supreme Court has decided federal questions of substance not theretofore determined by this Court. Supreme Court Rule 38 (5) (a).

A. Where a church has no organized system of church government, a civil court cannot adopt an ecclesiastical system of government for such church, by decreeing that the system of church government adopted by a portion of members, without the knowledge and consent of the whole membership, shall constitute the church organization authorized to administer and control the church affairs. Such judgment of the civil court, affirmed in the State Supreme Court's decision, is an unconstitutional exercise of ecclesiastical jurisdiction by the civil court over the internal

affairs of the church in violation of the Fourteenth Amendment to the Constitution of the United States. Neither difficulty or impracticality of procuring consent of the entire membership justifies such unconstitutional exercise of ecclesiastical jurisdiction by a civil court and this court should so declare.

B. A civil court may not enforce its adjudication of church affairs by enjoining the conduct and practice of their religion by the individual litigants. Such injunction is an invasion of rights of religious liberty, freedom of speech and press, guaranteed by the Fourteenth Amendment to the Constitution of the United States, and this Court should so declare.

C. A civil court may not adjudicate the beneficial rights of members of a church in the use of church property unless all of the members are either parties to or are represented in the litigation. As all members of the church have an inseparable right to use of church property, a judgment in favor of a part of the members constitutes a deprivation of property without Due Process of Law, in violation of the Fourteenth Amendment to the Constitution of the United States, and this Court should so declare.

3. It is both timely and important that this Court grant the Writ of Certiorari to determine the questions involved in this case. In this period of world conflict between divergent ideologies, in which the supremacy of the state is the prime principle on the one side, and the service of the state in the interest of the individuals comprising it is the key to the opposite political philosophy, it is of paramount importance that this High Court seize the opportunity presented by this case to again announce the basic doctrine on which our American system of government is founded, that of separation of church and state, and declare anew that freedom of religion, as guaranteed by the Constitution

of the United States requires that civil courts abstain from interference in the internal affairs of churches of this nation.

It is also important that this High Court reaffirm the principles announced in its early decision in *Watson* v. *Jones, supra,* to allay the widespread and unjustified criticism of that decision which so clearly expounds the basic philosophy on which our constitutional system of separation of church and state is based. It is likewise important that this High Court enlarge upon the basic principles there stated to encompass the numerous and varied forms of religious societies, which have been established since that early decision, and which do not fall within the categories of the three recognized forms of church government discussed in *Watson* v. *Jones, supra.*

WHEREFORE, your petitioners respectfully submit that the Writ of Certiorari should issue to the end that this Court may review the decision of the Supreme Court of the State of California and determine whether that Court has deprived petitioners of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

ROLLIN L. MCNITT,
EDYTHE JACOBS,
By ROLLIN L. MCNITT,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions of Courts Below

The opinion of the Supreme Court of the State of California is reported in 39 Advance California 127; 245 Pac. (2d) 481, and appears at page 197 in the record.

The opinion of the District Court of Appeal, Fourth District of California, is reported in 98 Advance Cal. Appellate; 220 Pac. (2d) 66, and appears at page 180 in the record.

Jurisdiction

The jurisdiction of this Court is fully covered in the foregoing Petition and the statement there made is adopted herein by reference.

Statement of the Case

In a prior representative suit between members of said church known as The Rosicrucian Fellowship and the petitioner corporation, seeking among other things the declaration of right of the members of the church to vote for trustees of petitioner corporation, the same Superior Court as in the case at bar, in a different department thereof, had rendered a judgment, in January, 1943, adjudging, among other things:

> "2. That the persons who constitute the believers and the followers of The Rosicrucian Philosophy constitute a Church known as The Rosicrucian Fellowship, as distinguished from The Rosicrucian Fellowship, a corporation, without any ecclesiastial organization or system of church government.
>
> "3. That said Church as such owns no real or personal property; that all of the real and personal property conveyed or transferred to or controlled by said corporation (petitioner herein) is owned by said corporation and that said corporation holds all of said real and personal property, as trustee for the members of said church, for the purposes allowed by the Articles of Incorporation as amended, and the By-Laws of said corporation, and the laws of the State of California." (R. 63).

Immediately after this judgment in favor of petitioner corporation, a small group of disgruntled members of the church devised another scheme to wrest control of the church property from petitioner corporation by organizing an association known as "The Probationers Association," which was incorporated in July, 1944 as "Rosicrucian Fellowship Non-Sectarian Church" (respondent corporation). (Find. of Fact IX and X, R. 115-118). This latter corporation claimed to be the "instrumentality for carrying on" the ecclesiastical functions of the church and to protect the property rights of the members of the church, as beneficiaries of said trust, against petitioner corporation. (Find. of Fact XI, R. 118).

Shortly after respondent corporation was incorporated, petitioner corporation brought the case at bar (in September, 1944) against respondent corporation and its board of directors to enjoin interference by respondent corporation with certain property rights of petitioner corporation, including the name "The Rosicrucian Fellowship", owned by petitioner corporation as trustee for the members of the church (R. 1). Respondent corporation and its directors filed a cross-action seeking a declaration of the rights of respondent corporation to use the church property (R. 38). The case proceeded to trial on pleadings dealing only with property rights; however, as the trial court was bound by the recent judgment in the prior suit adjudging petitioner corporation the owner and holder of the church property in trust for the members of the church, respondent corporation conceived a theory to circumvent that judgment, claiming to be the ecclesiastical agency of the church. Assuming ecclesiastical jurisdiction of the church, the trial court declared and adjudged the ecclesiastial and temporal functions of the church, partitioning the same between the two cor-

porations, (Judg. B.(2) (4), R. 142-3); and implemented such declaration by enjoining petitioner corporation and individuals who were then its trustees from conducting or exercising the ecclesiastical functions of their church. (Judg. C(4), R. 145).

To further support the transfer of control of the church to respondent corporation, the judgment of the trial court declares that the dominant use of the church property shall be had "by cross-complainant" in the

> "conduct of each and all of the ecclesiastiscal and esoteric functions of every nature and description as set forth and prescribed in the Articles of Incorporation, By-Laws and rules and regulations of The Rosicrucian Fellowship Non-Sectarian Church." (Judg. B(2), R. 142).

The judgment also declares the right of respondent corporation

> "to suspend and expel Students, Probationers and Disciples (members of the church) according to its by-laws, rules and regulations;" (Judg. B(2), R. 142).

In the answer to the complaint in this action, respondents admit that there are more than 3,000 members of the church in the United States and foreign countries (R. 26). Nonetheless, in order to make it appear that respondent corporation had a following of majority of the members of the church and disregarding the rights of nonresident members of the church, the trial court permitted respondents, late in the trial of the action, to amend the cross-complaint to change the cross-action to a purported representative action on behalf of only 706 members of the church residing in the United States; then the trial court proceeded to adjudge the dominant use of the church property in favor of those members who had joined respond-

ent corporation church and are willing to use the property as "prescribed in the Articles of Incorporation, By-Laws and rules and regulations" of respondent corporation. Those members who had not joined the new church as governed by respondent corporation were thus deprived of their beneficial interest in the church property; and as to the members residing outside of the United States, (numbering at least 2294 according to the record) such deprivation was made without even color of representation in the within action. The foreign members were neither parties to nor represented in the action (Amend. to Cross-Comp., R. 99).

This defect of parties was not only raised by the answer to the cross-complaint wherein petitioner corporation urged the defect or non-joinder of parties as a special defense, but the deprivation of constitutional rights of due process of law, freedom of religion, press and speech was urged as a ground for reversal of the trial court's judgment in both the District Court of Appeal and the Supreme Court of California, as more particularly specified under Statement of Basis of Jurisdiction, set forth in the foregoing Petition for Writ of Certiorari, which is adopted herein by reference, in the interest of brevity.

Petitioners herein carried an appeal from the trial court's judgment to the Supreme Court of the State of California, which (according to its rule) assigned the case for decision to the District Court of Appeal for the Fourth Appellate District of California. That Court *reversed* the trial court's judgment upon the ground, among others:

> 1. "Plaintiff corporation owns the real property here involved and certain personal property, all of which must be used by plaintiff corporation as trustee for the members of the unorganized church. Any use of such property not in violation of the duties of plain-

tiff corporation, as trustee, is, therefore, not the subject of control by the courts. * * *'' (R. 190).

2. ''Insofar as the judgment herein provided that the parties or any of them had or did not have the right to exercise or control any of the ecclesiastical or esoteric functions of the unorganized church, such determination was beyond the power of the court and unnecessary to a determination of the property rights of the parties.'' (R. 191).

3. ''In the instant case it was stipulated that there is no attempt to remove the trustees for malfeasance or failure to carry out the purposes of plaintiff corporation. Since there is no ''spiritual head'' of the unorganized church, as described in the Haines Judgment, (prior suit) and since no system of church government has been regularly set up by the membership of the unorganized church, groups of members, such as defendant corporation who represent only a part of the church, have no right to exercise exclusive control and management of the church affairs or property. Defendant corporation itself is not a member of such church and has no right of control of the actions of plaintiff corporation, except as it represents part of the beneficiaries. The persons who constitute the believers in and the followers of the Rosicrucian Philosophy constitute a church, without any ecclesiastical organization or system of government. No rules and regulations having been adopted governing the exercise of the right to disseminate the teachings of the Rosicrucian Philosophy, the courts cannot set up a system of church government or determine who may or may not disseminate the doctrines of the philosophy.'' (R. 195).

The Supreme Court of California then granted a hearing on petition of respondents, ignoring the learned opinion of the District Court of Appeal based on the universally recognized principle that, by reason of the division of state and church under our system of political and religious

freedom, the "civil courts have no ecclesiastical jurisdiction." Affirming the judgment of the trial court, the State Supreme Court found and adjudged:

> "From the judgment it is clear that the main object was to preserve the use of the property to the followers of the philosophy, and as later seen, not to interfere with them in the exercise of their ecclesiastical functions.
>
> "The main contention of plaintiff corporation on this appeal is that the court had no jurisdiction to decide who was entitled to exercise the ecclesiastical functions pertaining to the Rosicrucian philosophy; * * *
>
> "The provisions of the judgment and discussions during the trial, taking them as a whole, though in part couched in language dealing with ecclesiastical functions, purport to deal with civil and property rights, such as, who may use the property at Mt. Ecclesia, lists of members, rights to property, rights in the writings and disposal thereof, solicitation of members and contributions. It should be observed that various rights affected by the judgment have civil and property right connotations.
>
> * * * * * * *
>
> Hence the judgment may well be proper as reaching and affecting the rights, as it does, although by its language it might seem to go further and declare who may carry out so-called ecclesiastical functions, which may include the right to use the property to teach the philosophy and the solicitation of members and contributions.
>
> * * * * * * *
>
> "While the principle that courts will not purport to exercise ecclesiastical jurisdiction is settled as an abstract proposition, they will determine civil and property rights which depend essentially on the contracts of the parties as evinced by rules, regulations, practices and customs accepted and followed. * * *
>
> * * * * * * *

"Rather, the dispute concerns who shall have the right to use the property, to teach the philosophy, and exercise the other rights herein enumerated. Closely related to the right to use the property are also involved the rights of solicitation of, and contributions from members, and of selling the writings."

* * * * * * *

"The essential problem, nevertheless, is to ascertain from the acts, dealings and usages of the parties where the various rights rest in order to determine the ownership of civil and property rights, even though some so-called ecclesiastical rights are involved.

"* * * that from 1913 to 1919, the Heindels, with the assistance of the followers as members of the church, 'conducted all ecclesiastical functions for the church' and continued to do so until 1944. Those functions included obtaining contributions, using Mt. Ecclesia, lecturing, teaching the preparation, dissemination and sale of writings which had, as above seen, property and civil aspects;"

In its recital of the facts, the State Supreme Court stated:

"The court found that defendant corporation is sponsored and led by Mrs. Heindel. In October, 1934, another contract was made by the same parties in which was recited * * * that Mrs. Heindel had formed a corporation sole, Max Heindel Rose Cross Philosophies which was distributing the writings and had a following of 2,050; that plaintiff corporation has continued its activities since the 'schism', having 4,500 followers; that each has certain assets; that Mrs. Heindel and her corporation and followers have been asked to unite with plaintiff and they have accepted and the parties have agreed to a consolidation."

Notwithstanding this recital showing a membership in the church in excess of 6500, the State Supreme Court found and adjudged:

"The court found that by April, 1945, 541 proba-

tioners and disciples out of 706 in the United States had become members of defendant corporation, which is, of course, a majority. * * * Defendant corporation has offered to prove here that most of the foreign followers have also applied for membership. We think that is unnecessary as we feel the court was justified in assuming that a sufficiently substantial number of those who could reasonably be reached had joined. Moreover, we understand the judgment to accord the rights to all members of the unincorporated church association, as well as defendant corporation, and hence the foreign followers have not been prejudiced.

* * * * * * *

"We think it is clear from the record that the church was the unincorporated association of followers as found by the court."

* * * * * * *

"Plaintiff claims that it was not a proper case for a representative action in that it did not purport to include followers outside the United States; * * *

"* * * The basic issue involved was as to the dominant use of the property and, as we have seen, the judgment, if properly interpreted, preserved that use to all the followers, whether members of the unincorporated church association or defendant corporation. Followers other than members of defendant corporation, are not excluded nor are members in foreign lands deprived of any rights. Whether the foreign members are bound by the judgment need not be determined."

After this surprising opinion of the State Supreme Court in its departure from the recognized principles of law and ignorance of constitutional guarantees, petitioners herein filed a petition for rehearing in the State Supreme Court, pointing out the numerous errors in law, and errors and omissions in fact and urging specifically as grounds for rehearing the constitutional questions here raised, as more

fully set forth in the foregoing petition for Writ of Certiorari under "Statement of Basis of Jurisdiction". This petition for rehearing was denied without opinion.

Petitioner files the within proceeding not only to correct the gross miscarriage of justice in the deprivation of the constitutional rights as hereinafter argued, but also to erase the damaging effect of the decision of the highest court of the State of California in its disregard of well established rules of church law and the constitutional guarantees which protect the separation between church and state under our system of political and religious freedom.

Specification of Errors

1. The State Supreme Court erred in holding that there was no exercise of ecclesiastical jurisdiction over the church here involved, constituting a denial of due process of law in violation of said Fourteenth Amendment, in its determination:

A. That the trial court had jurisdiction to declare and determine the right of use of church properties in the exercise of ecclesiastical functions of the church, where the property had been adjudged to be owned and held by petitioner corporation in trust for the members of the church and no breach of trust was in issue in the litigation;

B. That the trial court had jurisdiction to determine the ecclesiastical questions which it declared and adjudged as incidents of the property rights involved in the litigation;

C. That the trial court had jurisdiction to determine which group of members of the church were entitled to exercise the ecclesiastical functions of the church, in the absence of a church tribunal, in order to adjudge property rights in favor of such faction of church members;

D. That the trial court had jurisdiction to declare which of the functions of the church were ecclesiastical and which were temporal; and to designate which of

the corporate parties to the litigation were entitled to exercise the respective functions so declared by the court;

E. That the trial court had jurisdiction to adjudge that all of the members of the church should exercise their beneficial rights of use of church property according to the Articles of Incorporation, by-laws, rules and regulations of respondent corporation which does not represent all of the members of the church;

F. That the trial court had jurisdiction to adjudge that all members of the church be subject to suspension and expulsion according to the by-laws, rules and regulations of respondent corporation, whether or not the members had joined respondent church corporation.

2. The State Supreme Court erred in failing to hold that the injunction against exercise and conduct of ecclesiastical functions of the church deprives petitioners of their rights of freedom of speech, religion and press, in violation of said Fourteenth Amendment.

3. The State Supreme Court erred in holding that the judgment did not abridge the constitutional guarantees of said Fourteenth Amendment where certain members of the church were neither parties to nor represented in the action and their beneficial rights in the church property were transferred, by the judgment, to the control of respondent corporation of which they were not members.

4. The State Supreme Court erred in holding that the constitutional guarantees of said Fourteenth Amendment were not abridged in its determination that

> "Followers, other than members of defendant corporation, are not excluded nor are members in foreign lands deprived of any rights,"

where the judgment transfers the beneficial use of the church property to those adhering to the Articles of Incorporation, by-laws, rules and regulations of defendant corporation (respondent).

5. The State Supreme Court erred in holding that the question of "whether the foreign members are bound by the judgment need not be determined," where the judgment declares that those members who adhere to the Articles of Incorporation, by-laws, rules and regulations of respondent corporation are entitled to the dominant use of the church property; and in failing to hold that such foreign members are thereby deprived of their beneficial rights in the church property without due process of law in violation of said Fourteenth Amendment.

Summary of Argument

I. The Exercise of Ecclesiastical Jurisdiction Over A Church by a Civil Court Constitutes a Denial of Due Process of Law in Violation of the Fourteenth Amendment.

A. Where a Contest is not so much for Title to Church Property as for Control of Church Affairs, and the Church Property has been Devoted to Church Purposes, no Breach of Trust Being Involved, the Court is Without Jurisdiction to Determine the Control of Ecclesiastical Functions of the Church.

B. Judicial Decree Requiring All Members of the Church to Submit to Ecclesiastical Control of a Faction of Members, Formulating their own System of Church Government, Without Knowledge or Consent of the Whole Membership, Constitutes an Unconstitutional Exercise of Ecclesiastical Jurisdiction by a Civil Court.

C. Where a Church Has no Organized System of Church Government, a Portion of the Members Adopt a System of Church Government Without the Knowledge and Consent of the Whole Membership, it is an Unconstitutional Exercise of Ecclesiastical Jurisdiction for the Court to Decree that the Whole Church Membership Must Submit to Such Church Government in their Beneficial Use of Church Property.

II. An Injunction Against Conducting or Carrying On

Ecclesiastical Functions of a Church Constitutes a Denial of the Constitutional Guarantees of Freedom of Religion and Freedom of Speech and Press.

III. Where all Members of a Church Are Not Represented In An Action Involving Church Property, the Unrepresented Members are Indispensable Parties; the Judgment in Favor of a Part of the Members Constitutes a Deprivation of Property Without Due Process of Law.

ARGUMENT

I

The Exercise of Ecclesiastical Jurisdiction Over a Church by a Civil Court Constitutes a Denial of Due Process of Law in Violation of the Fourteenth Amendment.

While giving "lip-service" to the constitutional principle announced by this Court in *Watson* v. *Jones*, 13 Wall. 679, 20 L. Ed. 666, and declaring that "the principle that courts will not purport to exercise ecclesiastical jurisdiction is settled as an *abstract proposition*, * * *" (Emphasis ours), the State Supreme Court, nevertheless, affirming the judgment of the trial court, assumed ecclesiastical jurisdiction over the internal affairs of the church here involved, in violation of the liberty as guaranteed by the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

It is an elementary principle of Constitutional law that "due process requires that a court which assumes to determine the rights of the parties shall have jurisdiction." It is equally fundamental that *civil courts have no ecclesiastical jurisdiction over religious societies.*

Watson v. *Jones* was decided in 1872. Since that year, this Court has not reaffirmed the principle of lack of ecclesiastical jurisdiction of civil courts in church controversies.

In its most recent decision, *Kedroff, etc.* v. *St. Nicholas Cathedral, etc.*, 21 L. W. 4029, decided November 24th, 1952, this Court reaffirms the principle of separation of church and state, holding a section of New York law unconstitutional as an invasion of the control over the church, in violation of constitutional principles of separation between church and state. It is even more important that this Court reaffirm the principle of separation of church and state as applied to the civil courts, as well as to the legislature, as the invasion of control over churches occurs more frequently in the courts to which church controversies are carried than in acts of legislatures, as in the New York statute.

In the absence of later declarations by this Court, there has been an ever-growing tendency on the part of state courts to qualify the limitation on civil courts' jurisdiction, —a reluctance to deny jurisdiction in church controversies, demonstrated by the increasing number of court decisions on disputes in religious societies. State courts have found numerous ways of circumventing the fundamental principles announced in *Watson* v. *Jones,* thus enlarging the scope of jurisdiction of civil courts over church affairs. In justification of such invasion of control over the internal affairs of churches, the state courts have cast about for distinctions which would support the questionable exercise of jurisdiction over ecclesiastical controversies. Many state courts have declared, as did the State Supreme Court in the case at bar, that

> "some of the so-called ecclesiastical functions are so interwoven with civil and property rights that any decision involving the latter must necessarily affect the former."

The State Supreme Court in its opinion states:

> "There are two ways in which the problem may arise.

> The question may arise as to the extent to which the court is bound by the decisions of the church tribunals in either ecclesiastical or temporal matters, or the scope of the jurisdiction the court will exercise when there are no such tribunals but there are disputes between factions concerning ecclesiastical and temporal matters. In the instant case the court found that there was no established church system or government therefor and hence no church tribunal. Whether an activity is ecclesiastical or involves property rights, especially when a decision on one necessarily involves consideration of the other, are difficult questions."

Observing "that various rights affected by the judgment have civil and property right connotations", the State Supreme Court affirms the judgment in this case, ruling (apparently with some qualms) that:

> "Hence the judgment may well be proper as reaching and affecting such rights, as it does, although by its language it might seem to go further and declare who may carry out so-called ecclesiastical functions, which may include the right to use the property to teach the philosophy and the solicitation of members and contributions."

It is apparent, from its lengthy quotations from *Zollman on American Church Law,* the State Supreme Court was influenced in its thinking by the critical comment of that writer on the decision of this Court in *Watson* v. *Jones.* Zollman devotes the entire Chapter 9 of his treatise on American Church Law to a critique of *Watson* v. *Jones,* disagreeing with the basic philosophy of that decision, terming it an "erroneous conception", even suggesting that "it is to be regretted that such an important and far-reaching decision was rendered by the United States Supreme Court," and urging the overruling of *Watson* v. *Jones,* as "a reasonable theory on which to dispose of cases

of this nature." Zollman contends that "the Supreme Court by this decision has impeded the progress of religious liberty instead of furthering it," but recognizing the sophistry of the state courts in applying the "property rights" distinction to a church controversy, Zollman comments:

> "The injustice resulting from the application of the rule of Watson v. Jones has induced many courts to revolt against it and to cast about for some distinction by which they could do justice to the parties before them without in form overturning the rule. This search has not been unsuccessful, though the distinction discovered cannot by any stretch of the imagination be called unimpeachable. A remark dropped by the Court in Watson v. Jones to the effect that an adoption of the English doctrine which limits church tribunals to the powers conferred upon them, 'would in effect transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions' may have given them their cue for the cultivation of a distinction * * * . It has been the panacea sought and used by the courts ever since in order to escape from the injustice which an indiscriminate application of the rule of Watson v. Jones would bring about." (Zollman, American Church Law, §314.)

Apparently, failing to comprehend the basic distinction between the American judicial system of separation of church and state and the judicial systems of other countries, Zollman even suggests that this Court was influenced in its decision by the expediencies of the time when *Watson* v. *Jones* arose, stating in his critique of that decision, (at p. 323):

> "This case unfortunately arose, during the reconstruction period, out of a question involving loyalty toward the Union on the part of one of the great church bodies of the country. * * * In seeking to

> support its decision * * *, the court was forced not only to disregard well-reasoned English cases in connection with dissenting churches, but was driven to argue that it was too difficult for the courts to examine the question of the jurisdiction of church tribunals and that our theory of religious liberty demands that they should not attempt such a task."

Other writers have found it less difficult to comprehend the fundamental basis for the limitation on civil court jurisdiction under the American system. In a recent annotation of the subject of "Suspension or expulsion from church or religious society and the remedies therefore," in 20 A.L.R. (2d) 421, it is stated, at p. 435:

> "Various reasons have been alleged as the basis for such limitation but it is believed that the considerations upon which it is mainly based are the principles of religious liberty and of the separation of church and state inherent in the American constitutional system.
>
> "Note 3. In this the American system differs from that of Great Britain where in both England and Scotland established churches are associated with the governmental authority and consequently decisions of the British courts as to ecclesiastical matters, even where independent or voluntary churches are involved, have been held to be without authority in the United States. See Watson v. Jones (1872, US) 13 Wall 679, 20 L. Ed. 666."

The State Supreme Court discloses in its opinion, that its decision was prompted more by the exigencies of the controversy than the legal principles involved, stating:

> "Moreover, the dispute between the parties has been going on for many years and should be settled."

In this approach to the controversy, the State Supreme Court has doubtless taken its cue from Zollman's summary

of his critique on *Watson* v. *Jones,* wherein Zollman states, at p. 323:

> "Yet they (the courts) have hesitated to overrule Watson v. Jones. Instead, they have sought to distinguish it. Though property rights were emphatically involved, they have sought to restrict the decision to cases where no property rights are involved. *In doing this, however, they have necessarily been driven to reserve to themselves an arbitrary discretion as to when property rights are or are not involved in a particular case.* Instead of deciding a case because property rights are or are not involved, *they have frequently put the cart before the horse and decided that property rights are or are not involved because they had on principles of their own concluded to decide the case before them one way or the other.*
>
> "It requires no argument that this condition of the law is both a discredit to the courts and a hardship to the litigants." (Emphasis ours.)

A. *Where A Contest Is Not So Much For Title To Church Property As For Control Of Church Affairs, And The Church Property Has Been Devoted To Church Purposes, No Breach of Trust Being Involved, The Court Is Without Jurisdiction To Determine the Control Of Ecclesiastical Functions Of The Church.*

In the case at bar, the title to the church property had previously been adjudicated in the prior action of Weaver v. Meyncke, between members of the church and petitioner corporation, wherein petitioner corporation was adjudged to own and hold all of the real and personal property, as trustee for members of the church, "*for the purposes allowed by the Articles of Incorporation as amended, and the By-Laws of said corporation, and the laws of the State of California.*" (Emphasis ours.) (R. 63.)

Although footnoting the fact that such judgment had

become final in the Superior Court, the State Supreme Court, nevertheless, affirms the judgment in this case, wherein the trial court assumed jurisdiction over the internal affairs of the church in declaring which of the church functions are ecclesiastical and which temporal and which of the contending factions had the right to exercise the functions so declared, enjoining the exercise and control of the ecclesiastical functions by the losing faction of members. The state courts justify their exercise of ecclesiastical jurisdiction in this case upon the theory that such determination was necessitated by the question of "right of use of church property" in the exercise of ecclesiastical functions.

It is pertinent then to examine the judgment in this case and the opinion of the State Supreme Court to ascertain whether the matters judicially determined were necessary or pertinent to a determination of the property rights involved in the action. *It is important to an understanding of the case, that the Court bear in mind that this was not an action for breach of trust or for diversion of the properties of the church to any other church or usage than the purposes for which the trust was created.* It was stipulated that there is not "any attempt in this action to remove these trustees for malfeasance or failure to carry out the purposes of this corporation". (R. 154). The State Supreme Court found that "there appears to be no question between the parties here as to the proper way or method of teaching the philosophy or its principles." (R. 206).

It must also be borne in mind that the action was instituted by petitioner corporation to protect certain property rights of the church, *not as against the members of the church,* but as against respondent corporation, a rival corporation, which admittedly does not represent all, if any, of the members of the church. Respondent corporation and its followers, by cross-complaint, sought a declaration of

their right to use of the church property. *As appears from the pleadings in the case at bar, there was no issue necessitating the determination of the ecclesiastical questions which were adjudicated in the judgment in this case.*

The District Court of Appeal in its decision in this case, correctly and constitutionally held:

> "Insofar as the judgment herein provided that the parties or any of them had or did not have the right to exercise or control of the ecclesiastical or esoteric functions of the unorganized church, such determination was beyond the power of the court and *unnecessary* to a determination of the property rights of the parties. The use of the real and personal property of plaintiff corporation is only limited by the trust, the by-laws and the laws of this state." (Emphasis ours.) (R. 191.)

Ignoring this learned and unanimous opinion of the Appellate Court, the State Supreme Court affirms the exercise of ecclesiastical jurisdiction by the trial court. Neither the urgency for settlement of the controversy nor the lack of similarity of the form of this church to any of the more familiar forms of church polity justifies such unconstitutional interference by the state courts in the internal affairs of this church.

While the State Supreme Court, in its opinion in this case, quotes from recognized authorities on what constitutes determination of ecclesiastical questions, citing instances of ecclesiastical questions, such as:

> (1) Deciding who the rightful leader of church ought to be;
>
> (2) Enjoin a clergyman from striking the complainant's name from his register of communicants; or
>
> (3) Enforce the religious rights of a member to partake in the church rituals;

that court in its recital of facts in this case and affirmation of the judgment, with seeming intellectual inconsistency, proceeds to ignore the principles and examples thus recited, and finds and declares:

(1) That defendant corporation is the ecclesiastical authority or spiritual leader of this church;

(2) That only defendant corporation has the right to exercise the ecclesiastical functions of this church and to suspend or expel its members; and

(3) That the members of this church must abide by the articles, by-laws, rules and regulations of defendant corporation, although they had no voice in their adoption, if they are to retain their membership in this church; and

(4) That no one else has any right to conduct or carry on the ecclesiastical functions of this church under penalty of contempt of court.

B. *Judicial Decree Requiring All Members of the Church to Submit to Ecclesiastical Control of Faction of Members, Formulating Their Own System of Church Government Without Knowledge or Consent of the Whole Membership, Constitutes an Unconstitutional Exercise of Ecclesiastical Jurisdiction by a Civil Court.*

In affirming the judgment of the trial court, the State Supreme Court disregards the plain language of the judgment, and speciously finds and adjudges, in the closing sentence of the opinion:

"As we construe the judgment, the rights are accorded to all the followers of the philosophy whether or not they are members of defendant corporation." (Op. pp. 39-40.) (R. 220.)

At other points of the opinion, the State Supreme Court states:

> "Moreover, we understand the judgment to accord rights to all members of the unincorporated church association, as well as defendant corporation, and hence the foreign followers have not been prejudiced." (Op. p. 21) (R. 209.)
>
> "We do not construe it to mean that only the members of defendant corporation are beneficiaries entitled to use the property." (Op. p. 23) (R. 210.)

That court was doubtless misled into this absolutely erroneous construction of the judgment by the fact that in the declaration of the beneficial rights in the church property, under Paragraph B(1) of the judgment (R. 139), both the members of the unincorporated church association and the members of defendant church corporation are included as beneficiaries of the church property; however, in Paragraph B(2) of the judgment (R. 142), where the dominant use and enjoyment of the church property is declared to be in "said cross-complaint" the judgment declares that such dominant use and enjoyment of the property *shall be had according to the Articles of Incorporation, by-laws, rules and regulations of defendant corporation,* thereby requiring all of the members of the church in using the church property to submit to the system of church government set up by a few of the members, without the knowledge or consent of the entire membership of the church.

In Paragraph B(2) of the judgment, the court declares:

> "That cross-complainants, as such beneficiaries, are entitled to the use and enjoyment of said * * * property * * * in the conduct of ecclesiastical and esoteric functions of the Rosicrucian Philosophy without molestation or interference from the cross-defendants, or any of them, their agents, servants or employees. That the said ecclesiastical and esoteric

> functions, include without limitation, the following: * * * To *suspend and expel* Students, Probationers and Disciples *according to its by-laws, rules and regulations; and to* otherwise *conduct each and all of the ecclesiastical and esoteric functions* of every nature and description *as set forth and prescribed in the Articles of Incorporation, by-laws and rules and regulations of The Rosicrucian Fellowship Non-Sectarian Church.* The *said use and enjoyment* of the said real property and personal property *by the said cross-complainant,* is and shall be the dominant use and enjoyment thereof." (Emphasis ours.) (R. 142.)

(We note in passing that in the State Supreme Court's statement of facts in the opinion, the quotation from said Paragraph B(2) is terminated just short of the above quoted requirement that the conduct of the ecclesiastical functions of the church be conducted according to the Articles, By-laws, rules and regulations of defendant corporation.)

In Paragraph C(10) of the judgment, the court declares and protects by injunction:

> *"The exclusive use by Mrs. Max Heindel, or other probationer or Disciple hereafter designated by The Rosicrucian Fellowship Non-Sectarian Church* of confidential discipleship instructions prepared by Max Heindel and entrusted to her for the benefit of the unincorporated church association." (Emphasis ours.) (R. 146.)

thus giving to respondent corporation the right to use and control of certain instructions of the Rosicrucian Philosophy to the exclusion of the use and control thereof by the believers and followers of the Rosicrucian Philosophy who are not members of respondent church corporation.

Paragraphs C(2), (3), (4), (6), (8) and (10) of the judgment (R. 145-6) contain injunctive provisions in aid of the declaration of right of, conduct and control of the ecclesi-

astical functions of the church by respondent corporation and its followers, and such provisions are not only outside of the issues of the case and unnecessary to a determination of the property rights involved, *but are in excess of the jurisdiction of a civil court.*

The by-laws of respondent corporation (Deft. Ex. TT) provide that only those disciples, probationers and students who make written application for membership and are accepted by the Central Ecclesiastical Council of respondent corporation are eligible to membership in the non-sectarian church. All of the believers and followers of the Rosicrucian Philosophy previously declared and adjudged to be the beneficial owners of the property, held in trust for them by petitioner corporation, and who are the members of the so-called unorganized church association, are admittedly not members, nor eligible to membership in respondent corporation church, and have not made application for membership nor been accepted for membership by the Central Ecclesiastical Council of respondent corporation. This power to exclude members of the Rosicrucian Fellowship by the right of refusal of application for membership, together with the power to suspend and expel members of the church according to the by-laws, rules and regulations of respondent corporation, which power is conferred on respondent corporation in said Paragraph B(2) of the judgment (R. 142), deprives those members of The Rosicrucian Fellowship who have not joined respondent corporation of their membership in the church and consequently unconstitutionally deprives the non-joiners of respondent corporation of their beneficial interest in the church property.

The provision of the judgment hereinabove quoted from Paragraph B(2) of the judgment which requires the domi-

nant use of the property by the membership of the church for ecclesiastical purposes as prescribed in the Articles of Incorporation, by-laws, rules and regulations of respondent corporation, requires all members of The Rosicrucian Fellowship to be members of respondent corporation and to submit to its by-laws, rules and regulations. These by-laws (Deft. Ex. TT) further provide: that the "Central Ecclesiastical Council" of respondent corporation shall be composed of seven members, appointed by the Board of Directors of respondent corporation, and of which Mrs. Heindel shall be "Spiritual Head" of its activities. Apart from the question of the creation of such "spiritual head" of a church, whose basic philosophy admits of no "spiritual head", operating as a change of doctrine of the philosophy itself, *such provision of the judgment requiring the dominant use of the church property to be had according to the Articles of Incorporation, by-laws, rules and regulations of defendant corporation, does unconstitutionally deprive those members of the church who have not joined respondent corporation of their vested interest in the church property.*

C. *Where a Church Has No Organized System of Church Government, and a Portion of the Members Adopt a System of Church Government Without the Knowledge and Consent of the Whole Membership, It Is an Unconstitutional Exercise of Ecclesiastical Jurisdiction for the Court to Decree that the Whole Church Membership Must Submit to Such Church Government in Their Beneficial Use of Church Property*

In the most recent decision of this Court, *Kedroff, etc.* v. *St. Nicholas Cathedral, etc., supra,* involving the constitutionality of a New York Statute which undertook by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing

hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America, a church organization limited to the diocese of North America and the Aleutian Islands, this Court, speaking through Mr. Justice Reed, held:

> "This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment prohibiting in this country the free exercise of religion. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to church statutes * * * prohibits the free exercise of religion.
>
> "* * * There is no charge of subversive or hostile action by any ecclesiastic. Here there is a transfer by statute of control over churches. This violates our rule of separation between church and state."

In the case at bar, as in the *Kedroff* case, there is no problem of title,—the issue is the right of use of church properties in the exercise of ecclesiastical functions of the church. However, in the case at bar, the transfer was made by judicial decree, (instead of by statute as in the *Kedroff* case), to the schismatic faction which has organized itself into a new system of church government with an ecclesiastical council, different from the practices of the church during the thirty or more years of its existence. *Petitioner submits that it is no less an unconstitutional invasion of the free exercise of religion if the transfer of church control is made by judicial decree than if made by legislative act.* Neither civil authority (court or legislature) has any jurisdiction over the internal affairs of churches extant in this country, whatever form of church government or lack of recognized church polity is involved. In the case at bar, the judgment of the trial court transferred the dominant use of the church property to the schismatic faction of

members who had organized respondent corporation, and required such use to be according to the articles, by-laws, rules and regulations of respondent, giving to that corporation the right to suspend and expel members of the church. This transfer is no less unconstitutional than if the same were made by legislative act.

The State Supreme Court premised its decision on the erroneous assumption:

> "The court found that a majority of the followers formed defendant corporation and while that was a factor considered by the court in reaching its conclusion as to the ownership of the rights, it was also predicated upon the premises that the unincorporated church was the basic group and owned most of the rights, * * *" (R. 209).

In the concurring opinion in the *Kedroff* case, Mr. Justice Frankfurter stated:

> "The argument by which New York seeks to justify this inroad into the realm of faith are echoes of past attempts at secular intervention in religious conflicts. It is said that an impressive majority both of the laity and of the priesthood of the old local church now adhere to the party whose candidate New York enthroned, as it were, as Archbishop. Be that as it may, *it is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads.*
>
> "Our Constitution does assure that anyone is free to worship according to his conscience. A legislature is not free to vest in a schismatic head the means of acting under the authority of his old church, by affording him the religious power which the use and occupancy of St. Nicholas Cathedral make possible." (Emphasis ours.)

In its opinion in this case, the State Supreme Court points out that according to the recital in the 1931 contract, Mrs. Heindel merged her group of schismatic followers, number-

ing 2050 members of Max Heindel Rose Cross Philosophies, with the 4500 members of The Rosicrucian Fellowship (R. 200) who remained under the leadership of plaintiff corporation during the four years of withdrawal from The Rosicrucian Fellowship by Mrs. Heindel as leader of her schismatic group. Thus, at the time of this merger (1931), the agreed membership in The Rosicrucian Fellowship numbered in excess of 6500. Since that time, the organization grew and prospered and it is fair to assume that the worldwide membership of The Rosicrucian Fellowship at the time of the judgment in this action (14 years after the 1931 merger) far exceeded the 1931 membership of 6500, of which the trial court found only 706 resided in the United States at the time of the judgment (R. 118).

Nonetheless, the State Supreme Court considers that the number of adherents to respondent corporation, found by the trial court to be 541, in April, 1945, out of the 706 members residing in the United States constitutes the church organization of the entire worldwide membership of The Rosicrucian Fellowship (R. 118).

It is perhaps unheard of in the annals of the higher courts that a Court of Review should take into account, as if evidence in the case, mere *post trial* offers of proof, without opportunity for cross-examination or rebuttal evidence, and considering such proffered proof that a number of foreign members had also applied for membership in respondent corporation, and basing its decision on such unprecedented judicial speculation, determine, as did the State Supreme Court in its opinion in the case at bar:

> "Defendant corporation has offered to prove here that most of the foreign followers have also applied for membership. We think that is unnecessary as we feel *the Court was justified in assuming that a sufficiently substantial number of those who could reasonably be reached had joined.*" (Emphasis ours.) (R. 209.)

There was no finding that any notice was given to the foreign members, or that any effort was made to reach any substantial number of foreign members. Neither the pleadings, nor findings of fact, nor judgment, refer to the foreign members nor purport to cover their rights. The foreign members were not parties to the litigation, either in person or by representation, except as their rights were protected by petitioner corporation. Nonetheless, the State Supreme Court astoundingly rules that "the foreign followers have not been prejudiced." (Op. p. 21, R. 209.)

Moreover, it appears according to the findings of fact of the trial court that there are at least 165 of the 706 members of The Rosicrucian Fellowship residing in the United States who had not joined respondent corporation.

It is obvious that those members in the United States and outside of the United States who have not joined respondent corporation, whatever their number may be, have not consented to nor adopted, by any known method, the by-laws, rules and regulations nor the system of church government set up by respondent corporation and its organizers.

The Trial Court ruled that petitioner corporation did not constitute the church organization or government, although incorporated by the Founder of the Church, Max Heindel, and to which all of the then existing members transferred their allegiance and to which the subsequent members who voluntarily joined the church looked for administration of the church affairs. Notwithstanding this long record of more than 30 years of administration of the church affairs by petitioner corporation, the court held that the church was unorganized because all of the members of the church did not previously consent to the incorporation of petitioner corporation or the adoption of its by-laws, rules and regulations governing the church.

Yet the State Supreme Court inconsistently held in its

opinion that "followers who did not waive their right to organize themselves into a permanent church organization *did organize defendant corporation with a complete church government.*" While reciting that only 287 members of the Probationers Association, organized defendant corporation, the State Supreme Court inconsistently rules that such incorporation by this small group of church members without the previous consent of the whole membership constitutes the organization of the so-called unorganized church, *and unconstitutionally forces, by judicial decree, upon the whole membership, the system of church government which the small group of 287 members established, as a "complete system of church government" for the whole vast worldwide membership of The Rosicrucian Fellowship.* The reasoning of the State Supreme Court in that respect is plainly fallacious, as such small group of members could not assume to form the organization or adopt a system of church government for the whole worldwide membership of the 30-year-old church, without the knowledge or consent of the entire membership. *Nor can the civil court decree a system of church government for the whole membership because of difficulty or impracticality of procuring consent of the entire membership,* as the State Supreme Court, in its decision, has done, having gone further even than the trial court in declaring that the foreign members are included in the judgment.

Nor should the State Courts have taken into account the number of adherents to respondent corporation as if members of The Rosicrucian Fellowship, many of which adherents were doubtless acquired by respondent corporation since the judgment in April, 1945, by taking in new members who were never members of the unorganized church, as controlling on the large number of real members of The Rosicrucian Fellowship who have not joined respondent corporation church.

In reaching its decision in this case, the State Supreme Court has established numerous erroneous rules of law and legal principles on ecclesiastical questions, constituting not only an unconstitutional exercise of ecclesiastical jurisdiction by the State Supreme Court and improper interference in the internal affairs of this church, but a horrendous precedent in laws pertaining to church controversies.

It is, therefore, both timely and expedient, that this Court take jurisdiction in this case not only to protect the constitutional rights here involved but to settle the important question whether civil courts have any ecclesiastical jurisdiction even where property rights are incidentally involved. This Court can thus lay to rest, once and for all, the shadows of doubt which have stalked the fundamental principle of separation of church and state almost from the time of the declaration of the principle by this Court in *Watson* v. *Jones*.

II

An Injunction Against Conducting or Carrying On Ecclesiastical Functions of a Church Constitutes a Denial of the Constitutional Guarantees of Freedom of Religion and Freedom of Speech and Press.

The State Supreme Court in its opinion again carelessly misquotes and misconstrues the judgment in reciting:

> "The injunctive part of the judgment restrained *plaintiff* * * * (3) conducting or interfering with the conduct of ecclesiastical functions; * * *" (Emphasis ours.) (R. 218.)

Whereas the judgment in fact provides, in paragraph C (4):

> "That *cross-defendants, and each of them, their agents, servants, attorneys and employees,* be and they are hereby permanently and perpetually enjoined: * * *

"(4) From conducting or attempting to conduct or carry on or interfering in any way with the conduct of the said ecclesiastical and esoteric functions of the Rosicrucian Philosophy by the said Probationers and Disciples." (Emphasis ours.) (R. 145.)

Not only *plaintiff* corporation is named as a *cross-defendant, but eleven individuals are also named as cross-defendants.* Each of these individuals are *probationers* (as required by the by-laws of petitioner corporation) and some of them *disciples* of The Rosicrucian Fellowship. Many of the agents, servants and employees of petitioner corporation are likewise believers and followers of the Rosicrucian Philosophy.

The State Supreme Court sustained the objection to paragraph C(9) of the judgment (R. 220), not because it restrains "false or libelous statements" but upon the ground that such injunction "does impinge upon freedom of speech especially when we consider that religious controversies are also concerned" (R. 220), *but inconsistently and unconstitutionally affirms the injunctive provisions of the judgment expressly impinging not only on the freedom of speech and press but on freedom of religion as well.*

The essential method of teaching and conducting this church, in its far reaching and worldwide forum, is by correspondence and circulation of publications dealing with the Rosicrucian Philosophy. Max Heindel, the Founder of this church, established the basic requirement for affiliation in the church, stressing "self-reliance" of the individual, apart from group activity, to be expressed by regular periodic correspondence by the individual with International Headquarters at Mt. Ecclesia, where the church records and publications are maintained. *The restraint on the individual probationers, cross-defendants, and the agents, servants and employees of petitioner corporation from exercising or con-*

ducting the ecclesiastical functions of the church, not only prevents them from following and practicing the religion of their choice, but restrains them from writing on the subject of their religion, teaching the same, or corresponding with other individual followers of the Rosicrucian Philosophy.

The injunctive provisions of this judgment are manifestly and unequivocally an abridgment of the freedom of religion and the freedom of speech and press, in violation of the Fourteenth Amendment to the Constitution of the United States.

III

Where All Members of a Church Are Not Represented in an Action Involving Church Property, the Unrepresented Members Are Indispensable Parties; the Judgment in Favor of a Part of the Members Constitutes a Deprivation of Property Without Due Process of Law.

It is a downright confiscation of property by judicial decree for the court to rule that the "foreign followers have not been prejudiced." In its opinion the State Supreme Court states:

> "It is apparent that if this is a proper representative action all of the persons represented are not indispensable parties. If plaintiff's argument is to prevail, it is doubtful that the controversies here could ever be settled unless every follower here, and abroad, was made a party. Obviously, this would not be feasible." (R. 214.)

It is certainly amazing that the State Supreme Court should have so misconceived the plain contention of petitioners that the cross-action should have been filed as a representative action for the whole membership and not just for the members residing in the United States, as the amended cross-complaint plainly shows. Petitioners did not urge

that the *persons represented were* indispensable parties, but that *all of the members were not represented* in the action and that in the absence of such representation of the total membership, those not represented (the foreign followers) were indispensable parties. In Appellant's Reply Brief *in the District Court of Appeal* (pp. 189-206), petitioners urged the following irrefutable arguments:

1. All of the Members of a Church have an inseparable interest as beneficiaries in the use of Church property. (App. Reply Br. pp. 189, 198.)

2. The Cross-Complaint, as amended, was only filed and maintained as a representative action on behalf of the members residing in the United States. (App. Reply Br. pp. 189, 198.)

3. By adjudicating that the use of the church property must be had according to the Articles of Incorporation, by-laws, rules and regulations of defendant corporation, the judgment deprives the members who have not joined defendant corporation of their beneficial interest in the church property. (App. Reply Br. pp. 192-201.)

4. The objection that this was not a proper representative action was raised by special defense in the answer to the cross-complaint that the cross-complaint does not state facts sufficient to constitute a cause of action by defendant corporation. (App. Reply Br. p. 206.)

5. The objection to lack of jurisdiction to adjudicate property rights of indispensable parties can be raised for the first time on appeal. (Resp. Reply Br. p. 203.)

6. Such deprivation of property rights of absent indispensable parties constitutes a deprivation of property without due process of law in violation of State and Federal constitutional provisions. (App. Reply Br. pp. 203-206.)

Such erroneous construction of the judgment by the State Supreme Court in its opinion constitutes a deprivation of

property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Conclusion

The blatant errors in construction of the plain language of the judgment in this case, by the State Supreme Court, in support of its erroneous rulings on constitutional questions raised in the briefs on appeal, not only constitute a gross miscarriage of justice, but for all of the reasons hereinabove stated, the decision of the State Supreme Court affirming the judgment constitutes a deprivation of property without due process of law and a denial of freedom of religion, freedom of speech and press, in violation of the Fourteenth Amendment to the Constitution of the United States.

Petitioners respectfully submit that it is timely and important that this Court take jurisdiction of this case to reaffirm the constitutional principle of separation of church and state, and declare anew that civil courts have no ecclesiastical jurisdiction over churches in this country whether the controversy involves a dispute over doctrinal beliefs or practices, or church government, or control of church property in exercise of ecclesiastical functions of the church. Where title to church property is not in issue, and no breach of trust in devoting the property to church purposes is involved, right of use of church property by disputing factions of a church in the exercise of the ecclesiastical functions of the church concerns the internal affairs of the church, over which the civil court has no ecclesiastical jurisdiction.

Respectfully submitted,

ROLLIN L. MCNITT,
EDYTHE JACOBS,

By ROLLIN L. MCNITT,
Counsel for Petitioners.

(5587)

[redacted]

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IN THE

Supreme Court of the United States

October Term, 1952

No. 482

THE ROSICRUCIAN FELLOWSHIP, a Corporation; Z. GLENN MEYNCKE, JUANITA EMERICK, ADDA J. WILKES, FREDERICK OAKES, KITTIE COWEN, OMAR DODSON, MARGARET SCARBOROUGH, MARY MONAHAN, ADAM KNIELING, ALFA LINDANGER, DR. GAY OWEN, as Individuals, and as Officers, Trustees and Directors of The Rosicrucian Fellowship, a Corporation,

Petitioners,

vs.

THE ROSICRUCIAN FELLOWSHIP NON-SECTARIAN CHURCH, a Corporation; MRS. MAX HEINDEL; IRENE MURRAY, GEORGE SCHWENK, ARNOLD MULLI, KARL MUELLER, Individually and as Directors and Incorporators of The Rosicrucian Fellowship Non-Sectarian Church; THE ROSICRUCIAN PROBATIONERS ASSOCIATION; and RICHARD WEIHRICH,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Petitioners, throughout their petition and supporting brief, have misstated points of fact as a foundation for their presentation of questions and arguments relating to jurisdiction and constitutional rights. At the outset, respondents will present a condensed statement of the true points of fact with specifications of erroneous points of fact made by petitioners.

A. Condensed Statement of Material Points of Fact.

A condensed summary of the points of fact based largely upon the Findings of the Trial Court, and other facts erroneously stated or omitted in petitioners' petition and brief, is as follows:

1. In 1909, an unincorporated church association was formed for the study of the "Rosicrucian Philosophy," a religious belief. By January, 1913, it had several hundred members known as "Probationers." It was known as, and used the name of, "The Rosicrucian Fellowship." [Finding II, R. 103-104.]

2. In January, 1913, Mr. and Mrs. Max Heindel, organizers of the association, and three dummy incorporators, formed a corporation known as "The Rosicrucian Fellowship," under the College and Seminary Sections of the Civil Code of California (Secs. 649-651), as distinguished from a church corporation under Sections 593-605 hereinafter of this code, for the express purpose of transferring to it real and personal property near Oceanside, California, known as "Mt. Ecclesia," together with certain temporal functions appertaining thereto, including the handling of moneys, publishing and selling of books, mailing esoteric letters prepared by the members of the church association, and the use of certain mailing lists of the association for mailing purposes only. Said corporation was formed without the knowledge, consent or approval of the members of the church association [Finding III, R. 105-108].

3. The college corporation continued to exist and do business as a college until 1943, and acted in the conduct of its temporal functions as a trustee; *cestuis* of the trust were the church association and its members [Finding

III, R. 105-108; Finding VII, R. 112]. The trustees (directors of the college corporation) openly admitted it was not a church [Finding VIII, R. 115].

4. By its Amended By-laws, adopted without the approval of the members of the church association, the college corporation was governed by a self-perpetuating Board of Trustees, and the twelve members of that board were the sole members of the Rosicrucian Fellowship, a corporation [Finding III, R. 108].

Note: This Finding of the Trial Court is directly contrary to petitioners' statement that the Rosicrucian Fellowship has over three thousand members all over the world (Statement appearing at pp. 2, 33 of the Petition).

5. From 1909 to July 6, 1944, Mr. and Mrs. Max Heindel and other members of the association continued to exercise the ecclesiastical functions of the church and to use the trust properties in connection with such ecclesiastical functions, except for the acts of interference by the college corporation and its trustees hereinafter stated [Finding II, R. 103; Finding IV, R. 108]. The church association, at all times after the date of formation of the college corporation until July 6, 1944, was known as, and used the name of, "The Rosicrucian Fellowship" [Finding IV, R. 109]. There was no evidence of deviation or departure from the religious belief or methods of dissemination thereof [R. 206]. There was no schism between the members of the association [R. 208].

6. On April 16, 1942, a representative suit was brought in the Superior Court of San Diego County, California (known as *Weaver v. Meyncke*) by the members of the association against the college corporation, (a) to deter-

mine the right of the members of the association to vote for trustees of the corporation, and (b) to compel restitution of trust funds misapplied in the operation of a sanitarium [Finding VIII, R. 114].

7. In January, 1943, it was determined in the *Weaver Case:* (a) That the Probationers, as members of the association, were a church known as "The Rosicrucian Fellowship," as distinguished from the college corporation, having at all times been engaged in the dissemination of the Rosicrucian Philosophy, without ecclesiastical organization or system of church government; (b) that the members of the association are not entitled to vote for Trustees of the college corporation; and (c) that trust funds were misapplied in the operation of a sanitarium, and that restitution should be made [Finding VIII, R. 114].

Note: This Finding approved by the State Supreme Court [R. 201-202] is contrary to petitioners' summary thereof at pages 16, 32.

8. In October, 1943, 287 members of the association *duly and regularly* formed an association known as the "Rosicrucian Probationers Association," with purposes: (a) to organize a permanent church institution of all Probationers; and (b) to establish an ecclesiastical government therefor. By July 6, 1944, approximately 400 Probationers (a majority of all the members of the church association in the United States), were members thereof [Finding IX, R. 115].

Note: This Finding is contrary to petitioners' statement, page 17, that this was a small group of disgruntled members of the Church.

9. After the decision in *Weaver v. Meyncke,* the Board of Trustees of the college corporation amended its By-laws, authorizing rules and regulations governing the members of the association; and, in December, 1943, adopted rules and regulations claiming exclusive control over church properties for all uses and purposes, and purporting to authorize such Board to suspend or expel members of the church association, with or without notice, hearing or cause. Such actions were taken without the knowledge or consent of the members of the church association. The Trustees removed and expelled two Probationers of the association and threatened to expel all other Probationers unless they ceased and desisted the organization of a permanent church, *took possession of trust properties by forceable entry and expelled and excluded the members of the church association, who sought to use the real and personal trust properties for ecclesiastical purposes.* None of the members of the church association consented or acquiesced in said rules and regulations, or claims, and are not estopped to claim or assert their rights to use the church properties for ecclesiastical purposes [Finding XII, R. 118-122].

10. Appellants have threatened, and will, unless enjoined by permanent injunction, continue to do each and all of said acts as aforesaid [Finding XII, R. 122].

11. On July 6, 1944, a majority of the members of the church association in the United States formed a church corporation: (a) to establish a system of church government for the benefit of all members of the church association; and (b) to protect their property rights as against the unlawful claims of ownership and use of possession of trust properties by the college corporation and its Trustees in the conduct of ecclesiastical functions. By

its By-laws, tenets, rules and regulations, a complete system of representative church government was established; all members of the association were privileged to join [Finding X, R. 116]. At the time of the trial (April 24, 1945), there were 706 Probationers residing in the United States, 541 of whom were members of respondent church corporation [Finding X, R. 118].

Petitioners' witness, Pearl B. Ackerman, testified on February 28, 1945, in substance: I am esoteric secretary of petitioner corporation [Rep. Tr. p. 114, lines 3-4]. As of January 19, 1945, there were 706 Probationers and Disciples in the United States and 1170 in the world [Rep. Tr. p. 152, line 24, to p. 153, line 8].

Note: This Finding of the Trial Court and evidence produced by petitioners is directly contrary to petitioners' statement that the Rosicrucian Fellowship has over three thousand members all over the world (see Pet. p. 2).

12. The college corporation at the trial claimed exclusive ownership of the mailing list and refused the members of the church association, seeking to organize the church association into a permanent church organization, the use thereof [Finding XV, R. 124].

13. Notices of the organization and copies of the Articles, By-laws and rules and regulations of the Probationers Association and respondent church corporation were mailed to all Probationers, whose names and addresses were known to the organizers [see testimony of Mr. George Schwenk, Rep. Tr. p. 1536, line 24, to p. 1539, line 18; p. 1508, lines 9-23].

14. After December, 1943, the college corporat[illegible] and its Trustees surreptitiously claimed and assumed exclusive ownership and use of the trust properties for ecclesiastical,

as well as temporal purposes, and excluded the unincorporated church association, the incorporated church, and the members of both, from using such properties for ecclesiastical purposes [Finding XII, R. 118; Finding XIII, R. 123].

None of these findings of fact were challenged by petitioners in their briefs in the state courts; they are now conclusive.

From the foregoing facts found it is evident that petitioner corporation, acting by and through its 12 self-perpetuating trustees attempted surreptitiously: (1) to claim exclusive ownership and exclusive use of all trust properties, the name, insignia, emblem, mailing list and copyrighted documents as against all Probationers, domestic and foreign, as members of the church association or as members of respondent church corporation, beneficial owners; (2) to usurp all ecclesiastical functions and to exclude any and all Probationers who attempted to use the trust properties for ecclesiastical purposes. These were the breaches of trust by petitioners found by the Trial Court, contrary to petitioners' statements at pages 11, 26, 32 and 33 of their petition that no breach of trust is involved.

B. Condensed Summary of the Pleadings.

In September, 1944, the college corporation, as plaintiff, commenced an injunction action in the Superior Court of Los Angeles County, against the church corporation and *five individual members of the church association,* as defendants.

In its complaint, the college corporation prayed:

> *"that defendants be enjoined: (1) from interfering in any way with the said business, property, services*

and affairs of plaintiff corporation; (2) from using the name 'The Rosicrucian Fellowship Non-Sectarian Church'; (3) from soliciting freewill offerings from Students, Probationers or Disciples of The Rosicrucian Fellowship; and (4) *from using any of the said copyrighted books and other literature;* that defendants be required to account for and pay to plaintiff corporation all freewill contributions received by it from the believers of the Rosicrucian Philosophy; *that defendants surrender to plaintiff, and desist from use of, said mailing list;* and for general equitable relief" [R. 10-11].

The defendants filed an answer and cross-complaint alleging, in substance, the facts found by the trial court above summarized. During the trial, the cross-complaint was amended so that the cross-action could be and was maintained for the benefit of all the Probationers in the United States, alleged to be 706 in number [R. 99-101]. The cross-action was against the college corporation and its twelve self-perpetuating Trustees for declaratory and other general equitable relief as to the ownership and right of use of the trust properties, the name "The Rosicrucian Fellowship," insignia, emblem, mailing list and the use of copyrighted books and other literature [R. 38-62].

An answer was filed to the cross-complaint. By the answer to the cross-complaint, the college corporation and its Trustees alleged and claimed: (1) Absolute ownership of real and personal trust property and the exclusive right of use thereof for temporal as well as ecclesiastical purposes [R. 84, Par. II; R. 86; Par. V; R. 87, Pars. VIII and IX]; (2) ownership and exclusive right to use the copyrighted documents [R. 89, Par. II]; (3) exclusive

right to use the said insignia and emblem [R. 89, Par. II]; (4) ownership and exclusive right of use of the names and addresses of Students, Probationers and Disciples, designated "affiliates" by petitioners [R. 89, Par. V]; (5) the exclusive right to print, publish and sell copyrighted documents under the license agreement of October 21, 1931, as modified by the agreement of October 9, 1934 [R. 90-98].

Note: Petitioners did not urge as a special defense to the cross-action, as they assert at pages 19 and 48 of their petition, the non-joinder of any Probationer not a party to the action. Petitioners merely urged as a special defense in their answer, that a very small minority of Students, Probationers and Disciples of the Rosicrucian Fellowship have consented to and are sponsoring the action of cross-complainants; that "all of the persons who constitute such minority are necessary parties to this action" [R. 98].

The actual controversies pleaded and tried were the rights of (a) petitioners, the college corporation and its twelve self-perpetuating Trustees (directors) as temporal Trustees of the real and personal property, and (b) respondents, representing all of the members of the church association as beneficial owners: (1) to ownership and right to use, possess and enjoy said real and personal properties; (2) to use the name "The Rosicrucian Fellowship"; (3) to use copyrighted books and documents; (4) to use an emblem and insignia of the Rosicrucian Philosophy formulated and established by Mr. and Mrs. Max Heindel; and (5) to use and possession of a mailing list of members of the association and Students of Philosophy, together with the plates and machinery for the transposition thereof; all in the conduct of ecclesiastical functions

of the Rosicrucian Philosophy, a religious belief. A secondary issue was the ownership of the copyrights upon said documents by plaintiff corporation and Mrs. Max Heindel, respectively, and the right to print, publish and sell copyrighted documents as between petitioner corporation and respondent corporation, respectively, under written license agreements (see *The Rosicrucian Fellowship v. The Rosicrucian Fellowship Non-Sectarian Church*, 72 Cal. App. 2d 171 at 172-182 (164 P. 2d 282 at 283)).

Petitioners admitted in their Appellants' Reply Brief that the subject matter of the case was property rights. At page 12 they state:

> "We do not quarrel with the assertion that the subject matter of this case, as shown by the complaint of Appellants and the cross-complaint of Respondents, are property rights in the property of The Rosicrucian Fellowship, owned and held by Appellant Corporation in trust for the members of The Rosicrucian Fellowship. The property rights involved in the complaint of Appellants are (1) use of the name, 'The Rosicrucian Fellowship,' (2) use of certain copyrights, (3) use of the mailing list of the members and affiliates of The Rosicrucian Fellowship, (4) accounting for financial contributions obtained by respondents through deceptive use of aforesaid mailing list of Appellants. The subject matter of the cross-complaint covers not only the aforesaid property rights but Respondents assert in addition the right to use all of the real and personal property of The Rosicrucian Fellowship, as well as its emblem and insignia, in competition with Appellants and Appellant Corporation and members of The Rosicrucian Fellowship."

The Supreme Court stated the subject matter of the case as follows:

> "The controversy mainly concerns whether plaintiff corporation or defendant corporation and the unorganized followers have rights in connection with certain property acquired in the (fol. 2504) course of the development of the religious group known as 'The Rosicrucian Fellowship.'" [R. 197.]

The case was transferred to San Diego County and there tried.

C. Summary of the Judgment of the Trial Court.

From the foregoing Findings of Fact, the Trial Court rendered its judgment, in substance as follows:

> Paragraph A: That plaintiff (petitioner) corporation take nothing by its complaint [R. 139];
>
> Paragraph B: The property and civil rights of the parties to and represented in the action were declared and determined, in substance, as follows:
>
> (1) That cross-defendant (petitioner) corporation owns all the real and personal property at Mt. Ecclesia and wheresoever situate, as trustee, in trust for the use, benefit and enjoyment of the cross-complainants (including all Probationers and Disciples in the United States, a majority of all in the world), as members of said unincorporated church association, and as members of the respondent church corporation as beneficiaries (hereinafter referred to as "respondents") [R. 139-142];

Note: This is contrary to the petitioners' often repeated statement that the judgment transferred the use of the properties for ecclesiastical purposes to respondent church corporation.

(2) That cross-complainants (a majority of all members of the church association in the world), as beneficiaries, are entitled to use of possession of the said trust properties in the conduct of the ecclesiastical functions without molestation or interference from petitioners. The ecclesiastical functions are then defined in part. Said use is the dominant use and enjoyment thereof [R. 142];

Note: This portion of the judgment does not, as often stated by petitioners, declare the beneficial use of the trust properties in respondent church corporation. At page 148 of Appellants' Opening Brief, they state: ". . . the judgment in this case does not expressly decree any rights of the property of the church in favor of Respondent Corporation . . ." This is an admission contrary to petitioners' present position.

(3) That cross-defendants (petitioners) by any of their acts found, have not acquired, and have no right to exercise or control any of the said ecclesiastical functions or to use the said trust properties for said purpose; *that the Probationers and Disciples, as members of the said church association or as members of respondent church corporation, have not acquiesced in any of said acts, and are not estopped, and have not waived, the right to organize a permanent church organization with a complete system of church government or to assert or exercise full and complete control of all said ecclesiastical functions* [R. 142-143];

(4) That cross-defendant (petitioner) corporation, acting by its petitioner's trustees, has and shall have the right to the use and enjoyment of the said trust

properties for temporal functions only (therein defined), *"all for the account and benefit of the Probationers and Disciples, as members of the unincorporated church association and as members of The Rosicrucian Fellowship Non-sectarian Church (respondent church corporation), beneficiaries thereof"; said use shall be servient to the right of said Probationers and Disciples to use thereof in the conduct of said ecclesiastical functions and purposes, as members of said church* [R. 143];

(5) That the Probationers and Disciples, as members of said church association and as members of respondent church corporation, are entitled, from continuous usage from and after 1909, to the use and enjoyment of the name "The Rosicrucian Fellowship," insignia and emblem, without molestation or interference from cross-defendants (petitioners) [R. 144];

(6) That the Probationers and Disciples, as members of said church association and as members of respondent church corporation, are entitled to the use and enjoyment of the mailing list of Students, Probationers and Disciples, the multigraph plates and machinery necessary for the transposition thereof, free from interference by any of the cross-defendants (petitioners) [R. 144];

(7) That the said contract of October 9, 1934 [Ex. E to cross-complaint, modifying the license agreement of October 23, 1931], has been and is breached, terminated, and is null and void [R. 144];

(8) That cross-complainant (respondent) Mrs. Max Heindel is the owner of the books, pamphlets

and letters described in Exhibit C to the cross-complaint, and copyrights thereon, subject to the non-exclusive right of appellant corporation to *print, publish and sell* (*use* not mentioned) the same under license agreement of October 23, 1931 [Ex. D to cross-complaint; R. 144];

(9) That cross-complainant (respondent) Mrs. Max Heindel was entitled to license The Rosicrucian Fellowship Non-Sectarian Church (respondent church corporation) under license agreement of October 10, 1944, to *print, publish, sell, distribute and use* each and all of said copyrighted books, pamphlets and letters [R. 144];

(10) That cross-complainant (respondent) church corporation was and is entitled to, and has, the non-exclusive perpetual right under said license agreement of October 10, 1944, to print, publish, sell, distribute and *use* each and all of said copyrighted books and documents [R. 145].

Paragraph C: Cross-defendants (petitioners) are, and each of them, and their agents, servants, attorneys and employees is, enjoined:

(1) From claiming or asserting ownership of said trust properties, except as trustee, for the use, benefit and enjoyment of the Probationers and Disciples of the Rosicrucian Philosophy [R. 145];

(2) From interfering with the Probationers and Disciples in the use and enjoyment of said trust properties in the conduct of the ecclesiastical functions of the Rosicrucian Philosophy [R. 145];

(3) From interfering with the use of said trust properties by Students admitted by the Probationers and Disciples in the study or participation in ecclesiastical functions as established and conducted by the Probationers and Disciples [R. 145];

(4) From conducting, attempting to conduct or carry on, or interfering with the conduct of, the said ecclesiastical functions by the Probationers and Disciples [R. 145];

(5) From claiming or asserting the exclusive right to the use of the name "The Rosicrucian Fellowship," insignia or emblem, or interfering in any way with the use thereof by cross-complainants (respondents) [R. 145];

(6) From preventing, or interfering in any way with, the use by the Probationers and Disciples, as members of the said church association and as members of respondent church corporation, of the mailing list, multigraph plates or machinery for the transposition thereof [R. 145-146];

(7) From claiming or asserting that respondent church corporation has no right to print, publish, sell or *use* all or any of the said copyrighted documents under said license agreement of October 10, 1944 [R. 146];

(8) From interfering with Mrs. Heindel or respondent church corporation in the use of plates and matrices for the printing of said copyrighted books

and documents under said license agreement of October 23, 1931, except as therein provided for the joint use thereof [see Ex. D to cross-complaint, providing for joint use of plates and matrices; R. 146];

(9) From writing or mailing any letter or other written or printed statement, or making any verbal or oral statement, to Students and Disciples or any other person, firm or corporation, containing any false statements in substance or effect as found in paragraph XII(3) of said findings (that respondents, including Mrs. Heindel, were dishonest and untruthful; had selfish purposes and motives in organizing the Rosicrucian Probationers' Association and respondent church corporation, a recalcitrant minority, an outlaw organization without sanction, and were organized for the purpose of usurping the ecclesiastical functions of The Rosicrucian Fellowship; that The Rosicrucian Fellowship was not a church or religious organization), or doing any other acts or things, by threat, intimidation or otherwise, to prevent or deter Probationers or Disciples from becoming members of respondent church corporation; and from interfering in any way with the Probationers and Disciples as members of the said church association and as members of respondent church corporation in the conduct of the ecclesiastical functions at any place [see summary of Finding XII and evidence in support thereof, *supra;* R. 146];

Note: This paragraph was reversed by the State Supreme Court [R. 220].

(10) From interfering with the exclusive use by Mrs. Heindel, or other Probationers or Disciples hereafter designated by respondent church corporation, of confidential discipleship instructions prepared by Max Heindel and entrusted to Mrs. Max Heindel for the benefit of the unincorporated church association [see summary of Finding XII-7 and evidence in support thereof, *supra;* R. 146].

Paragraph D: That none of the causes of action of the cross-complaint is barred under Section 337, Subdivision 1 of the Code of Civil Procedure; that none of the respondents has waived any of the rights or claims set forth in the first, second, third or fourth causes of action of the cross-complaint, and respondents are not estopped to claim or assert any of the relief prayed for therein [R. 146-147].

Paragraph E: That respondents recover from appellants their costs of suit [R. 147]."

D. The Decision of the Supreme Court of California.

Based upon the foregoing Finding of the Trial Court, the Supreme Court of California affirmed the judgment of the Trial Court in all respects except as to Paragraph C(9) of said judgment, which was reversed, and held:

1. The Trial court had jurisdiction to determine the property and civil rights which were the basic issues in the action as between all the Probationers represented therein, and as a necessary incident thereto, to inquire into

and determine facts as to contracts, rules, regulations, practices and customs accepted and followed by the parties relating to the ecclesiastical and temporal functions, respectively.

2. The petitioner corporation, acting by and through its twelve self-perpetuating Trustees, did not own and could not surreptitiously claim the property and civil rights as against the Probationers, as members of the church association, or as members of the respondent church corporation, *cestui;* and could not use the trust properties and civil rights for ecclesiastical purposes, attempted to be usurped by petitioners; that the malfeasant Trustees were properly enjoined from such claims and uses [R. 204-209].

3. The cross-action was a proper representative action where the Probationers represented in the action were a majority of all the Probationers in the world; the foreign Probationers were not indispensable parties to the action; the judgment did not require all Probationers to submit to the ecclesiastical control of the Church by respondent church corporation; and the rights of foreign Probationers were not adversely affected by the judgment [R. 209-210].

E. Statement of Questions Involved.

The real questions involved are:

1. Did the Trial Court have jurisdiction, without violating the due process clause of the United States Constitution, to try and determine the property and civil rights

of the trustees and beneficiaries, respectively; and, as a necessary incident thereto, to inquire into and determine facts as to contracts, rules, regulations, practices and customs, accepted and followed by the parties, relating to ecclesiastical and temporal functions, respectively?

2. Did the judgment of the Trial Court and decision of the Supreme Court of California declaring the property and civil rights of Petitioners, as trustees, on the one hand; and the probationers, as members of the church association and as members of respondent church corporation, on the other hand; and enjoining the trustees from unlawfully claiming the property and civil rights, adversely to all *cestui,* deprive the trustees of freedom of negligence, freedom of speech or press contrary to the Fourteenth Amendment of the United States Constitution?

3. Where, as here, the temporal trustees claim all property and civil rights adversely to all beneficiaries; did not urge, as a special defense to the action the nonjoinder of any probationer; prevented respondents from obtaining their consent to represent them in the action by withholding the mailing list; the foreign probationers were outside the jurisdiction of the State Court; the judgment did not adversely affect their property or civil rights, can the trustees assert and were the foreign probationers indispensable parties to the action?

ARGUMENT.

I.

The State Court Had Jurisdiction, Without Violating the Due Process Clause of the United States Constitution, to Try and Determine the Property and Civil Rights of the Trustees and Beneficiaries Represented, Respectively; and, as a Necessary Incident Thereto, the Facts as to Contracts, Rules, Regulations, Practices, Customs and Usages Followed by the Parties Relating to the Ecclesiastical and Temporal Functions, Respectively. Any Federal Questions Decided Were in Accord With Applicable Decisions of This Court.

Note: Respondents' argument under this topic covers appellants' first reason relied on for allowance of the writ (Pet. pp. 10-11), and Point 1 of appellants' argument (Pet. pp. 27-45).

Respondents have heretofore demonstrated that the issues pleaded, tried, found and determined in the Trial Court, and by the decision of the State Supreme Court, were the respective claims of the Trustees and beneficiaries represented to title and use of real property and civil rights relating to trust property, the name, insignia, emblem and mailing list, for ecclesiastical purposes; whether the Trustees could surreptitiously claim such property rights and civil rights for ecclesiastical purposes adverse to all beneficiaries; whether the Probationers, as beneficiaries, were entitled to such use.

The United States Supreme Court has consistently held: (1) In church controversies as to use of church property, the Civil Courts have jurisdiction to inquire into the form of church government, contracts, rules, regulations, practices and customs accepted and followed by the

members; (2) that the Trustees of church properties cannot, by chicanery, deceit or fraud, claim title and exclusive use of church property and civil rights for their own selfish benefit by exclusion of members or any other fraudulent manner, under the guise of infraction of freedom of religion, freedom of the press, or freedom of speech; and (3) that a majority of the members of a church having an independent congregation, without higher ecclesiastical authority or officers vested with power of control, are entitled to the use of church properties.

Watson v. Jones, 80 U. S. 679, 20 L. Ed. 666.

In that case, this Court announced these fundamental principles:

1. Religious organizations come before the courts in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property or of contract are equally under the protection of the law and the actions of their members subject to its restraints (p. 670[1]). If, as here, the form of church organization is that of an independent congregation, without higher ecclesiastical authority or officers vested with power of control, the principle of government must be that of majority rule, which must control the right to the use of the property (p. 675[2]).

2. The Trustees of the church hold possession in a fiduciary capacity, have no personal ownership or right, and can be compelled, in a proper case, made out in a Court having jurisdiction, to recognize the rights of possession and use by the beneficiaries of the trust (p. 673).

These principles were followed in *Bouldin v. Alexander,* 82 U. S. 131, 21 L. Ed. 69. In this case, a minority of

the members including the pastor of a Baptist Church, having a congregational form of church government, without fealty to higher ecclesiastic authority, determined to turn out the four temporal Trustees and a majority of the congregation, without citation or trial, and to elect their own Trustees, who took exclusive possession of church property. The Court examined into the form of church government, rules, regulations, usages and practices and determined that the minority members and their Trustees could not claim the properties and use thereof contrary to the duly constituted members and their Trustees. The holding of the Court is well stated in 23 R. C. L. 435, as follows:

> "It has also been held in some instances that while the civil courts will ordinarily leave ecclesiastical questions to the church courts, this presupposes a court organized according to the organic law of the particular church, and that a member who consented to be tried by the courts of the church when he united with it has a right to be heard in civil courts on the question whether unauthorized persons have usurped control of the church tribunal."

At page 72, the Supreme Court further stated:

> "In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."

In the case at bar, the Court found that there was no schism; that the church was without a system of church government having higher ecclesiastical authority; that the Trustees could not usurp the ecclesiastical functions and use of the church properties for that purpose.

Gonzales v. Roman Catholic Archbishop of Manila, 280 U. S. 1, 74 L. Ed. 131, holding that the Archbishop

was a juristic person amenable to the Philippine Courts for the enforcement of any legal right. In answer to the contention of the defendant that the Court had no jurisdiction, this Court said, at page 136:

> "The objection is not sound. The courts have jurisdiction of the parties. For the Archbishop is a juristic person, amenable to the Philippine courts for the enforcement of any legal right; and the petitioner asserts such a right. There is jurisdiction of the subject-matter. For the petitioner's claim is, in substance, that he is entitled to the relief sought as the beneficiary of a trust."

Other authorities have followed these decisions.

In 76 Corpus Juris Secundum, "Religious Societies, Sec. 86, Jurisdiction and Power of Civil Courts in General," at pages 873-874, it is said:

> "While the civil courts have no jurisdiction over, and no concern with purely ecclesiastical questions and controversies, they do have jurisdiction as to civil, contract, and property rights even though such rights are involved in, or arise from, a church controversy."

Zollman on "American Civil Church Law" also concurs in this principle. At page 186, Zollman states:

> "Since unanimity of thought and conduct is a goal which, even if it were desirable to be reached, will forever remain unattainable it follows that in independent societies, which owe no fealty or obligation to any higher authority, *the will of the numerical majority of its members must ordinarily determine the action* of the church upon all questions of church government, and be the law of the church. Clear indeed must be the case which will result in setting

aside the cardinal principal which lies at the foundation of free government in church as well as in state, viz., the right of the majority to rule."

Also, at page 191, the same author says:

"The guaranty of religious freedom 'does not guaranty freedom to steal churches.' "

At pages 11 and 32, petitioners assert that the contest in the case at bar is not for title of church property; and, at page 33, that the action instituted by petitioner corporation was to protect certain property rights of the church and not as against the members of the church. These assertions are contrary to petitioners' pleadings, hereinbefore summarized, wherein petitioners claim absolute ownership of the trust properties, exclusive use of possession thereof for all purposes, and exclusive right to the use of the name, insignia, emblem, mailing list and copyrighted documents. No allegation is contained in petitioners' pleadings, under which they claim to hold any of the properties or civil rights in trust for any of the Probationers (beneficiaries).

At page 12 of petitioners' brief in the State Court, they state:

*"We do not quarrel with the assertion that the subject matter of this case, as shown by the complaint of appellants and the cross-complaint of respondents, are property rights in the property of the Rosicrucian Fellowship * * *."*

Appellants' next contention, set forth at page 11, is that the judgment affirmed by the State Supreme Court transferred control of the use of church properties in the exercise of ecclesiastical functions to respondent church corporation organized without the knowledge and consent

of all members of the church, and, at page 33, the judgment declared and "enjoined the exercise and control of ecclesiastical functions by the losing faction of members."

The only persons enjoined by the judgment were appellant corporation and its Trustees. Again, at page 35, it is claimed by petitioners that, by the judgment, the defendant corporation is determined to be the ecclesiastical leader of the church; that only it has the right to exercise these functions; that all the members of the association must abide by its articles, by-laws, rules and regulations; and that no other person has the right to carry on the ecclesiastical functions of the church under penalty of contempt.

The sole basis for petitioners' construction of the judgment is paragraph B(2) of the judgment. The first sentence of paragraph B(2) of the judgment reads as follows:

> "(2) That cross-complainants, as such beneficiaries, are entitled to the use and enjoyment of said real property, improvements, fixtures and all other personal property of every nature and description in and upon said real property in the conduct of ecclesiastical and esoteric functions of the Rosicrucian Philosophy without molestation or interference from the cross-defendants or any of them, their agents, servants or employees."

By the use of the clause "cross-complainants, as such beneficiaries," refers to paragraph B(1) of the judgment, which provides as follows:

> "(1) That cross-defendant, The Rosicrucian Fellowship, a corporation, owns and holds all that certain real property located in the City of Oceanside, County of San Diego, State of California, and more

particularly described as follows: (property description) and all other real property wheresoever situated and all improvements, fixtures and all other personal property thereon and thereat, of every nature and description, as trustee, in trust for the use, benefit and enjoyment of the cross-complainants as Probationers and Disciples of the Rosicrucian Philosophy, as members of the unincorporated church association organized in 1908 and 1909, and as members of The Rosicrucian Fellowship Non-Sectarian Church, as beneficiaries."

Paragraph B(2) of the judgment then proceeds to state the ecclesiastical functions as including "without limitation" various items specified, and concludes with this clause: "and to otherwise conduct each and all of the ecclesiastical and esoteric functions of every nature and description as set forth and prescribed in the Articles of Incorporation, By-laws and rules and regulations of The Rosicrucian Fellowship Non-Secterian Church." This clause *does not limit* the other specified items of what constitutes ecclesiastical functions, but is *in addition thereto,* and applies only to the members of the association who have joined the respondent church corporation. This is the only reasonable construction of the judgment; otherwise, paragraph B(2) would be inconsistent with paragraph B(1) thereof.

By reading paragraphs B(1) and B(2) alone, it might appear that the rights declared were in the cross-complainants (all the Probationers in the United States, 706 in number, a majority in the world). However, other provisions clearly establish that the beneficial rights declared and protected were in all of the Probationers and not just those represented in the action.

Paragraph B(3) of the judgment, after declaring that the petitioners have no right to control any of the ecclesiastical functions or use the trust properties for the purpose, declares that the Probationers and Disciples, whether members of the church association or church corporation, have not waived a right to assert or exercise full and complete control of the ecclesiastical functions.

Paragraph B(4) of the judgment declares petitioner corporation to have the right to use and enjoy the right to church properties for temporal purposes only, "all for the account and benefit of the Probationers and Disciples, as members of the unincorporated church association and as members of the Rosicrucian Fellowship Non-Sectarian Church, beneficiaries thereof."

Paragraph B(5) of the judgment declares that the Probationers and Disciples, as members of the church association and church corporation, are entitled to use and enjoy the name, insignia and emblem.

Paragraph B(6) of the judgment declares that the Probationers and Disciples, as members of the association and church corporation, are entitled to use and enjoy the mailing list.

The injunctive provisions of the judgment enjoin the college corporation and its Trustees (petitioners) from interfering with the property and civil rights of the Probationers and Disciples, as members of the church association and as members of respondent church corporation, as beneficiaries.

Therefore, it is crystal-clear that the beneficiaries entitled to the use of the properties and civil rights are the Probationers and Disciples of the Rosicrucian Philosophy, as members of the unincorporated church asso-

ciation and as members of the respondent church corporation.

The Supreme Court so viewed the judgment and stated:

> "As we construe the judgment, the rights are accorded to all of the followers of the philosophy whether or not they are members of the defendant corporation." [R. 220.]

The Court also stated:

> "We do not construe it (the judgment) to mean that only the members of defendant corporation are beneficiaries entitled to the use of the property." [R. 210.]

Even if this Court should construe the judgment as declaring the right to use of trust properties for ecclesiastical purposes in the cross-complainants, representing a majority of all the Probationers in the world, such declaration is in entire accord with the decisions of this Court.

Watson v. Jones, supra;

Bouldin v. Alexander, supra.

A. Re: Appellants' Authorities.

Appellants first assert that there is a complete division between church and state under any and all circumstances. They cite, in support of their position, the case of:

Watson v. Jones, supra.

This case does *not* support petitioners' contention. The case announces the general principle of separation between church and state, but holds a civil Court had jurisdiction to inquire into the form of church government and practices; and, where a church has a form of church

government with a higher ecclesiastical authority, the determination of that body is binding on the Civil Courts. However, the Court there did lay down the principles, hereinbefore summarized: (1) rights of property and of contract of religious organizations are under the protection of the law and the actions of their members subject to its restraints; (2) that in churches having an independent congregation form of church government, a majority of the members are entitled to the use of the church properties; and (3) the Trustees of any church can be forced, by orders of the Civil Courts, to respect the rights of the members entitled to such use.

Kedroff, etc. v. St. Nicholas Cathedral, etc., 97 L. Ed. Adv. p. 95; 21 L. W. 4029, is cited by petitioners in support of their position. In that case, a church having a form of church government with higher ecclesiastical authority, and where the church building is occupied by duly constituted appointees of the higher ecclesiastical authority, a state statute which attempts to divest their possession and use of the church property, in favor of a corporation created and declared to be entitled to possession or control of the church properties by a special Act of the Legislature, violates the guarantees of religious freedom embodied in the First and Fourteenth Amendments.

In the case at bar, the church had no higher ecclesiastic authorities or tribunals; there was no schism; there was no deviation in the methods of teaching the religious belief or attempted diversion of the properties therefor; and there was no state statute involved. The distinction as to the power of the Court to adjudicate disputes over church property, and the rights of the legislators to do so,

is recognized in the concurring opinion by Mr. Justice Frankfurter. The *Kedroff* case is entirely distinguishable from the case at bar.

At page 31, petitioners cite and quote from 20 A. L. R. 2d 421. An examination of that authority discloses that it deals entirely with the jurisdiction of civil courts to determine whether or not there was a duly constituted church authority in the case of the suspension or expulsion of members of a church or religious society. It is significant to note from the following quotations that this authority does not support petitioners.

> (P. 440.) "It is generally held that a civil court has jurisdiction to determine the question whether an alleged expulsion of a member from a church or religious society was the act of an authority within such body having power to order it."
>
> (P. 442.) "It is worthy of note also that *Bouldin v. Alexander* has been very widely cited as an authority for reviewing the actuality of an expulsion, while *Watson v. Jones* has apparently never been followed to the extent of basing upon its authority a refusal to review the jurisdiction of an expelling tribunal."
>
> (P. 445.) "Consequently one of the most common instances of the review of the actuality of an expulsion is the action of a court in determining whether it was void because the person or body undertaking to expel was not authorized to do so the rules or customs governing the disciplinary authority of the particular church."
>
> (P. 447.) "Another very common occasion for the review of the actuality of an expulsion is the question whether the minority of a church having a congregational polity has undertaken to expel the majority."

> (P. 470.) "In addition to whatever jurisdiction a particular court may consider itself to have in an ordinary case of expulsion it has the further jurisdiction to review the question whether an expulsion was induced by fraud, since 'fraud vitiates all transactions.' "

In the case at bar, the Trustees fraudulently and without authority excluded the Probationers from the use of church properties.

Respondents urge that petitioners, as temporal Trustees, never had any control of the use of church properties in the exercise of ecclesiastical functions, except those usurped and unlawfully claimed by the Trustees, who were enjoined from such use. These were the facts found.

At page 42, petitioners refer to recitations in the 1931 license contract, as to the number of members (over 2000) of the Rosicrucian Fellowship. The recitation does not support petitioners' statement, but is only to the effect there were approximately 4500 Students, Probationers and Disciples. No matter how many members there may have been in 1931, it was the conclusive Finding of the Trial Court that there were 706 Probationers in the United States, and by petitioners' own evidence there were 1170 in the world at the time of trial.

Respondents submit that the judgment of the Trial Court and the Opinion of the State Supreme Court are in exact accord with applicable decisions of this Court (Rule 38(5)(a)).

II.

The Injunction Against the Malfeasant Trustees Enjoining Them From Interfering With the Use by the Beneficiaries of the Trust Properties and Civil Rights for Ecclesiastical Purposes, Did Not Constitute a Denial of Freedom of Religion, Freedom of Speech or Press.

At pages 45-47 of their brief, petitioners quote paragraph C(4) of the injunctive provisions of the judgment. Paragraph C(2) reads as follows:

> "From interfering with the said Probationers and Disciples in the use and enjoyment of said real property, improvements, fixtures, and all other personal property thereon and thereat, in the conduct of or participation in said ecclesiastical and esoteric functions of the Rosicrucian Philosophy."

The phrase "said ecclesiastical and esoteric functions," used in paragraph C(4), refers *to use and enjoyment of the trust properties* by the Probationers in the conduct of the ecclesiastical functions as used in paragraph C(2) of the judgment. Petitioners, without citation of authority, vehemently assert that the injunction constitutes a denial of freedom of religion, press and speech guaranteed by the United States Constitution to the individual cross-defendants enjoined. Petitioners assume, without demonstration, that all of said individuals were Probationers of the Rosicrucian Philosophy. Even assuming, without admitting, that they were such Probationers, it is apparently the position of petitioners: that individuals, who occupy the position of fiduciary trustees of temporalities, can, with immunity, violate the fundamental principles of trusts simply by removal of their fiduciary mask, and be free to continue their acts of malfeasance in an

individual capacity. This would be contrary to the fundamental principles of justice which, in the case of fraud, will look through any and all forms and fictions to the end that justice may be accomplished in an equitable proceeding.

Petitioners have cited no authority for their position for the obvious reason that none exists.

III.

Where, as Here, the Trustees Claim All Property and Civil Rights Adversely to All Beneficiaries, Prevented Respondents From Obtaining the Consent of Foreign Probationers to Represent Them in the Action by Withholding the Mailing List, the Trial Court Could Not Otherwise Acquire Jurisdiction of the Foreign Probationers, All Probationers Were Adequately and Fairly Represented in the Action, and the Judgment Did Not Adversely Affect Their Property or Civil Rights, the Foreign Probationers Were Not Indispensable Parties; the Judgment Did Not Deprive Them of Property Without Due Process of Law.

The Trial Court found that the petitioners claimed exclusive right to the use of the mailing list of Probationers and refused respondents the right to use the same. It also found that petitioners claimed exclusive ownership of the property and civil rights, the name, insignia, emblem and copyright documents, for all purposes and took possession thereof by force and excluded all Probationers, who were seeking to organize the Church, from use thereof. Petitioners have not claimed or demonstrated that the foreign Probationers were not fairly and adequately represented in the action, nor have they demonstrated that the judgment adversely affected their rights.

On the contrary, the Supreme Court, after carefully studying and reviewing the judgment, determined that all Probationers, as members of the unincorporated church association and as members of respondent church corporation, were the beneficiaries for whom the trust properties were held and, as such beneficiaries, were entitled to use the trust properties and civil rights for ecclesiastical purposes without molestation or interference by the Trustees.

The Supreme Court of California so held, and stated:

> "* * * we feel the court was justified in assuming that a sufficiently substantial number of those who could reasonably be reached had joined. Moreover, we understand the judgment to accord rights to all members of the unincorporated church association, as well as defendant corporation, and hence the foreign followers have not been prejudiced." [R. 209.]
>
> "Thus, all followers, whether members of the unincorporated church, or the defendant corporation, are beneficiaries and may use the property. We do not construe it to mean that only the members of defendant corporation are beneficially entitled to the use." [R. 210.]

The decision of the State Court is in exact accord with prior decisions of this Court.

> *Smith et al. v. Swarmstedt et al.*, 57 U. S. 288, 302, 14 L. Ed. 942.

This was a representative action by six members of the Methodist Episcopal Church South, on behalf of all preachers of the Church South, amounting to about 1500, against two members of the Methodist Episcopal Church, representing more than 3000, for the division of property acquired by the general church for the benefit of all travel-

ing preachers. Defendants objected that the Court had no jurisdiction for want of proper parties plaintiff. At pages 301-302, the Court said:

> "The rule is well established, that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. Story's Eq. Pl. secs. 97, 98, 99, 103, 107, 110, 111, 116, 120; 2 Mitf. Pl. Jer. Ed. 167, 2 Paige, 19; 4 Mylne & Cr. 134, 619; 2 De Gex & Smale, 102, 122.
>
> "Mr. Justice Story, in his valuable treatise on Equity Pleadings, after discussing this subject with his usual research and fullness, arranges the exceptions to the general rule, as follows: 1. Where the question is one of a common or general interest, and one or more sue or defend for the benefit of the whole. 2. Where the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole; and 3. Where the parties are very numerous, and though they have or may have separate and distinct interests, yet it is impracticable to bring them all before the court.
>
> "In this latter class, though the rights of the several persons may be separate and distinct, yet there must be a common interest or a common right, which the bill seeks to establish or enforce. As an illustration, bills have been permitted to be brought by the lord of a manor against some of the tenants, and vice versa, by some of the tenants in behalf of themselves and the other tenants, to establish some right—such as suit to a mill, or right of common,

or to cut turf. So by a parson of a parish against some of the parishioners to establish a general right to tithes—or conversely, by some of the parishioners in behalf of all to establish a parochial modus.

"In all cases where exceptions to the general rule are allowed, and a few are permitted to sue and defend on behalf of the many, by representation, care must be taken that persons are brought on the record fairly representing the interest or right involved, so that it may be fully and honestly tried.

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

The above case is particularly applicable to the case at bar, where the rights of all the numerous beneficiaries are protected by the judgment, and their interests are identical with the cross-complainants to prevent petitioners from stealing the Church.

Waterman v. Canal-Louisiana Bank and Trust Co., 215 U. S. 33, 54 L. Ed. 80.

In this case, the Court said, at page 86:

> "* * * the relation of an indispensable party to the suit must be that no decree can be entered in the case which will do justice between the parties actually before the court without injuriously affecting the rights of such absent party. 1 Street, Fed. Eq. Pr., Sec. 519."

Plainly stated, petitioners' contention is facetious and specious. It is urged for only one reason: to enable the malfeasant Trustees to permanently usurp the ecclesiastical functions and unlawfully claim ownership and right of use of property and civil rights for that purpose, adversely to all beneficiaries, including the foreign Probationers who they assert are indispensable parties.

Respondents submit that the decision of the Trial Court, as affirmed by the State Supreme Court, has been decided by this Court as evidenced by respondents' authorities heretofore cited and is in exact accord therewith. The Petition, in the interests of justice, should be denied.

Respectfully submitted,

STEWART, SHAW & MURPHEY,
WM. L. MURPHEY,
Counsel for Respondents.

LUCE, FORWARD, KUNZEL & SCRIPPS,
FRED KUNZEL,
Of Counsel.

All emphasis and parenthetical matter is ours unless otherwise specifically stated.